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HEARINGS

Before The

COMMITTEE ON PUBLIC WORKS

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A BILL TO AMEND THE CLEAN AIR ACT,
AND FOR OTHER PURPOSES

EXECUTIVE SESSION

Wednesday, August 19, 1970

United States Senate,

Subcommittee on Air and Water
Pollution of the Committee on
Public Works,

Washington, D. C.

The subcommittee met, pursuant to call, at 2:25 p.m.
in room 4200, New Senate Office Building, Senator Edmund S.
Muskie (chairman of the subcommittee) presiding.

Present: Senators Randolph, Muskie, Spong, Eagleton,
Cooper, Boggs, Baker, and Dole.

Also present: Richard B. Royce, Bailey Guard, M. Barry
Meyex, Thomas C. Jorling, Leon G. Billings, Harold A. Symes,
Harold H. Brayman, Philip T. Cummings, and Richard D. Grundy.

Senator Muskie. Gentlemen, may I suggest a method of
procedure? We would like, if possible, to report this to the
full Committee this afternoon. I am prepared to go as long
as we can. I suggest to the staff, if we are not finished by
the time of the next vote that we then move over there into
room 207, which will be available to us until 5:00.

1 We have here a section-by-section analysis, which could
2 serve the very useful purpose of being an agenda, and that
3 would key us into the specific language as we want to get to
4 it.

5 May I say this about the structure of the bill? You will
6 remember at the close of the last session, I opened up the
7 possibility of shifting to national emission standards rather
8 than quality standards. Leon and the staff have gone over
9 that with the Administration. We can get into the
10 Administration's reasoning on that if you would like. But,
11 in any case, we decided to back off of that.

12 What we have here is a refinement of the National
13 Aviation's clean-air standards, coupled with some limited
14 emission controls, first those dealing with hazardous
15 substances and the second dealing with what the staff and the
16 print call here "localized emissions." Thirdly is control
17 over mobile sources, both new and used motor-vehicles.

18 That is the approach of the bill, and I think we might
19 begin with a section-by-section analysis.

20 I think Section 106 is the first substantive section.
21 Section 104 is research. Section 105 are housekeeping
22 provisions that the Administration requested for the purpose
23 of dealing with local governments. Section 106 is the first
24 substantive provision.

25 If you want to follow along at the same time with the
 committee print, on page 5---

1 Mr. Billings. Section 106 in the summary is Section 106
2 in the existing law, which provides 100-percent grants for
3 interstate quality agencies for the purpose of planning in
4 interstate regions. That has been slightly revised and
5 continues to make available 100-percent grants.

6 Members of the committee have the print entitled "Bills-
7 DH-1."

8 Senator Muskie. Page 7 is air-quality regions. The
9 structure of this section, as I understand it -- and the staff
10 will correct me if I am wrong -- is the one we had already
11 gone over in some length and agreed to. That is that the
12 Secretary will designate the interstate and major intrastate
13 quality-control regions as the principal quality-control areas.
14 Secondly, all remaining areas of the country not covered by
15 the major regions of the interstate regions can then be
16 subdivided into air-quality regions by the state, so all of
17 the land area of a state is governed by Federally-designated
18 or state-subdivided areas.

19 That is really the structural mechanism for then
20 developing the implementation plans.

21 Then on page 8 we get the air-quality criteria and
22 control techniques. This, too, you have gone over in
23 considerable length up to this time.

24 What this requires is, first, that the Secretary will
25 publish a list of pollutants within 30 days, which will be

1 subject to criteria. Those criteria must be issued within
2 ,12 months.

3 You ought to have this information. You all have a list
4 here that ought to be identified for you.

5 The first list, the general pervasive one, these are the
6 pollutants for which criteria will be issued when the whole
7 job has been done. That list is much shorter than any list
8 we have previously discussed, because the remaining items on
9 7 list that has been discussed up to this point are in the
10 second column -- "limited, pervasive." Those pollutants are
11 treated in this new draft under a separate provision, which
12 will not require criteria but which can be dealt with as
13 substances with local effects that ought to come under direct
14 control.

15 We will get to the method of control a little later.

16 Finally, we have the hazardous substances, which are
17 governed under that section of the bill.

18 As I went over this print last night, I was concerned
19 until I saw this list that we were putting too heavy a burden
20 on the Secretary to meet in the time frame we have set out in
21 Section 109. I think there is no problem on the basis of this
22 new list, which, I take it, ought to be included in the
23 report on the bill.

24 The Administration says this timetable can be met.

25 Senator Cooper. It recurs in here, "health and welfare."
What does "welfare" mean as it is used?

1 Senator Baker. While we are waiting for an answer, I am
2 concerned about that, too, because I missed the last meeting.
3 But I was under the impression these standards were going to
4 be predicated on health effects.

5 If you make it "health and welfare," it seems to me you
6 are deviating.

7 Senator Muskie. We are talking here about the criteria
8 at the top of page 9 of your print:

9 "Criteria are supposed to indicate the kind and extent
10 of all identifiable effects on health and welfare."

11 Mr. Guard. On any of the odors we have listed, would
12 that have an effect?

13 Senator Randolph. I hesitate to do this, but I have
14 done it in the past. I can't hear the comments. I think I
15 have reasonably good ears. Let's make it available to all
16 the members.

17 Senator Cooper. I note throughout the bill the phrase
18 "health and welfare." I want to know what "welfare" signifies
19 in connection with the bill.

20 Senator Muskie. When we talk about "welfare," we are
21 talking about the effects on soils, water -- this is down at
22 the bottom of page 9. These are large (C) in parenthesis.
23 We are talking about any unfavorable effects on soils, water,
24 vegetation, man-made materials, animals, wildlife, weather,
25 visibility, climate, as well as effects on economic values.

1 That is what the criteria are supposed to identify. The
2 standards that would be set would deal only with health.

3 Senator Baker. Such as appear on page 11 in paragraph 3?

4 Senator Muskie. Yes, that is correct. The definition
5 of "health of persons" would be included in the report. I
6 think it is perhaps more appropriate, and we will be quite
7 specific.

8 Section 109 is the criteria. We required this in the
9 1967 law, the publishing of criteria and the techniques for
10 dealing with air pollution. This is simply a restatement of
11 what was in the 1967 law, and I think it improved it. There
12 is nothing really basically new.

13 The first new item is the next one on page 8 of my print
14 and page 10 of your print. These are the national air-
15 quality standards and goals. Again, this is basically the
16 same structure we have considered before. I don't think
17 there are any substantial changes.

18 It would provide that within 30 days after the enactment
19 the Secretary "shall publish the national proposed ambient
20 standards for all those pollutants on which standards have
21 been based." Since the standards are based upon that
22 criteria, the 30 days is ample time to do that job.

23 With respect to new criteria that are issued after this
24 becomes law, the Secretary, "30 days after publication of
25 the criteria" It is the same procedure.

1 In the middle of page 11 is the definition of "national
2 ambient standards."

3 Senator Randolph. At that point, Mr. Chairman, we speak
4 of the public health and welfare. Senator Cooper has at least
5 partially brought this to our attention.

6 I want to inquire as to the "health of persons." Could
7 that be explained so we can focus attention on that?

8 Mr. Billings. Mr. Chairman, we are developing a
9 definition. The reason for not using the terms "public health"
10 as opposed to "health and persons," there is a connotation
11 in the concept of "public health" that gets into a rather
12 concept of "well-being." We are talking about essentially a
13 physical-health question of whether there are selected
14 populations groups, and so on, which may have adverse effects
15 from the presence of pollutants in the ambient area. This
16 is "the health of persons" in order to get away from the most
17 subjective term "public health." And we do have a definition
18 we will make available.

19 Mr. Royce. Surgeon General Stewart, in testifying before
20 the subcommittee in 1967, defined "public health" as "not
21 just the absence of disease but the existence of mental and
22 psychological and emotional well-being as well." And "public
23 health and welfare" brings us into that.

24 This, I believe, is designed to focus on protecting the
25 young, the elderly, those who have been shown to be most

1 acceptable in the epidemiological studies conducted in England
2 and elsewhere on the bronchial and asthmatic victims.

3 Senator Baker. These words are imprecise enough so that
4 we may be putting the country in a terrible position. You
5 can't protect the health of someone. The natural environment
6 is going to be destructive to some people.

7 For instance, those who suffer from a serious pulmonary
8 disease -- I wonder if we should qualify this more by saying
9 "necessary for the general protection of health."

10 Senator Muskie. That means that you give no consideration
11 to those who are non-healthy for reasons not related to air
12 pollution, but whose health is affected by air pollution.
13 Aren't we concerned about them?

14 Senator Baker. I think we are concerned for the maximum
15 protection for the maximum number. I think that it is fool-
16 hardy for us to establish a goal of absolute protection for
17 everyone, because I think it is impossible.

18 Senator Muskie. I am not arguing that.

19 Senator Baker. I think, regardless of what we say, the
20 likelihood is that the courts are going to interpret it, when
21 they are called upon to interpret it, as they interpret all
22 other statutes, and that is to say Congress never legislates
23 the impossible and that it is impossible to protect every
24 living person against anything.

25 Mr. Royce. We are talking about groups of hypersensitive
persons.

1 Senator Randolph. Everybody is that way today. My mail
2 indicates that.

3 Senator Muskie. For years we have talked about the
4 health of the elderly, the young, and the sick.

5 Senator Boggs. The fact that "persons" is plural, does
6 that not meet the point you raise?

7 Senator Baker. I don't think it makes a particle bit of
8 difference. I think the courts are going to have to
9 determine what is the maximum feasible protection of the
10 largest number of people. I think they will do that.

11 Senator Muskie. The staff will circulate a definition
12 before we take this up in the full Committee. If anyone has
13 any suggestion for modifying this language, we can take it
14 into consideration.

15 Senator Baker. Mr. Chairman, I don't insist on a change.
16 I suggested when this balloting began that we consider
17 modifying the language to read "the general health" or "to
18 insure the general protection of the health of persons." But
19 I don't think it is important.

20 I think the way the language reads now -- "to insure the
21 health of persons" -- implies to do it within the confines and
22 ability of our resources. And I think the courts would
23 interpret it that way.

24 Senator Muskie. I have no objection to leaving out the
25 word "any."

1 Senator Baker. That was taken out.

2 The more you look at the language, the less satisfactory
3 it is.

4 Senator Baker. The more confidence I have, then, the
5 Court will figure out what we are saying.

6 Senator Muskie. Why not say "necessary to protect the
7 health of persons" -- "which are necessary to protect the
8 health of persons ..."? Are we agreed on that?

9 At the bottom of page 11, simultaneously there is the
10 question of national air-quality goals which would be
11 standards related to all other effects. The principal
12 purpose of this, of course, is to establish some protection
13 against degradation in areas which are not yet polluted.

14 I think we have gone over this before and understand it,
15 and it is still here.

16 We next go on to implementation plans, Section 11, which
17 is on page 12 of the committee print.

18 On this, too, I think we gone over substantially all
19 of it before.

20 Mr. Billings. One thing that has not been decided is
21 the number of years.

22 Senator Muskie. The next seven pages are related to
23 implementation plans. If I might just briefly summarize what
24 it contains to refresh everyone's recollection, first of all,
25 each state is given nine months after the standards are

promulgated to produce plans for implementation, maintenance, and enforcement of the standards. The Secretary has four months to approve the plans.

Beginning at the bottom of page 12, large (A), you have details that must be included in the plan. I think it would be useful to run down through those, because I don't think we ever had them in details.

First of all, there is the question of a national deadline, which we have not yet agreed upon. We have talked about three years. That three years, when geared to the schedule for moving, translates into a little over five years before they finally take effect. So I think three years is as reasonable a time frame that we can put in here.

Senator Eagleton. Is it really reasonable, though?

Senator Muskie. Actually, you only have three years when the implementation plan is finally approved before those subject to it know what they must do. This means design, procurement of the technology, this means installation, and so on. In a sense, they have five years to evaluate their own position in terms of the actual official pronouncement of what they must do, and they are only going to have three years' notice.

If you try to shorten it, I think you get into some trouble.

Senator Baker. I think we are on the horns of a dilemma.

1 I agree with Senator Eagleton. I heard testimony before
2 another subcommittee of this committee about the power shortage
3 in this country and the coal shortage in particular. And it
4 was pointed out they have a six-year leadtime on some of their
5 equipment.

6 Here, again, we have a balancing of equities that I am
7 really sure we can win.

8 Senator Muskie. We are going to be criticized by both
9 sides, whether we pick four years or two years.

10 Senator Eagleton. I don't know if it is at this point
11 or at another point. But there was some discussion in another
12 meeting by Senator Baker, and maybe others, with respect to
13 some of these time limits. There would be a procedure
14 whereby at zero hours, five years and one month, say, in
15 City "X" they could not make it.

16 Senator Muskie. There is an option in here which we will
17 get to.

18 Senator Boggs. What are we proposing now, Mr. Chairman?

19 Senator Muskie. Three years.

20 Senator Boggs. You estimate that makes a total length
21 of five years?

22 Mr. Billings. For pollutants where a criterion exists,
23 it would be four years and five months. For pollutants for
24 which criteria have been published, 12 months after listed
25 it will be three years plus 30 months, or 5-1/2 years, so you
have an average of five years.

1 Senator Muskie. With respect to particulates, hydro-
2 carbons, et cetera, et cetera, the deadline translates into
3 four years and five months.

4 Mr. Guard. That is 98 percent of the pollution by weight.

5 Senator Cooper. Is nine months a sufficient length of
6 time?

7 Mr. Billings. We understand from the Administration that
8 is adequate, since we have reduced the number of criteria that
9 will be submitted.

10 Senator Boggs. What does the Administration think in
11 regard to the three-year period? Have they expressed an
12 opinion on that?

13 Mr. Billings. We discussed this with Mr. Middleton's
14 assistant, and he felt that three years was ample time for
15 what you could do. They had reservations about the moving
16 sources depending on what particular kinds of decisions are
17 made. But as far as technically relative to stationary
18 sources and things you can't do technically, it can be done
19 in that time.

20 Senator Muskie. The used automobile is still the problem.

21 Senator Boggs. This is the big item that would affect
22 the automobile.

23 Senator Muskie. We have another provision in here to
24 cover used cars, and we will consider it again later.
25

1 I suggest three years now. You can keep that in the
2 back of your mind as we consider the rest of the bill. Then
3 when we come to a vote on the whole bill, we can make our
4 final decision. You are damned if you do, and you are damned
5 if you don't on this one.

6 The other provisions that are required in the plans---

7 Mr. Royce. Mr. Chairman, may we focus on the question
8 of goals in the implementation plan, as distinguished from
9 standards and whether or not the states would be prepared or
10 capable of setting forth an implementation plan at the same
11 time on goals as on standards?

12 Senator Muskie. You have opened the question. You can
13 comment on it.

14 Mr. Royce. I have reservations -- and I think
15 Counsel Meyer does -- whether or not the states have the
16 capability plan to establish a time for the implementation
17 of goals which are very, very hazy. In some instances,
18 say, in Gary, Indiana, they will never be achievable --
19 "never" is a very long time -- but time within which, maybe
20 in five years could they set a realistic target date for the
21 achievement of goals?

22 We have discussed it in staff of allowing the Secretary
23 to give an 18-month waiver to a state on goals, so that they
24 could be working on the standards, which are the really
25 important thing at this stage, and then have another 18 months

1 at the Secretary's discretion to develop an implementation
2 plan for the achievement of goals.

3 There is a real manpower problem, which the committee
4 has recognized in terms of the capabilities of the states.
5 I do not think it would remove the committee from the
6 responsibility of establishing goals in this legislation but
7 would allow some flexibility.

8 Senator Muskie. You are suggesting two different time-
9 tables, one for the standards which relate to health and a
10 later one for goals which relate to other effects?

11 Mr. Billings. There are two timetables for filing. It
12 would be even more administratively if you are talking about
13 a region in which the standard or goal already existed. In
14 that case there would be no need to grant a waiver. If you
15 are talking about a city like New York City or Gary, where
16 they have a severe problem, the Secretary would give them
17 an additional 18 months on how they would meet the goals in
18 that region.

19 Senator Muskie. Our primary concern is the health
20 standards and the other 18 months, as long as it is
21 discretionary.

22 Mr. Guard. It would relieve the burden on everyone.

23 Senator Muskie. This is the effects on other than
24 health -- another 18 months. Is there any objection?
25

1 Senator Eagleton. We have criteria, standards, and goals.
2 And I get them intermixed. The failure to achieve a goal by
3 "X" month or "X" years -- Is that enforceable? Or are we just
4 enforcing standards?

5 Senator Muskie. We are enforcing standards on a national
6 basis.

7 Senator Eagleton. If Gary does not meet a goal by
8 year "X," what do they do?

9 Senator Muskie. Some of these goals may not be
10 attainable for 30 years or ever.

11 Senator Eagleton. What happens to Gary when they do not
12 achieve it by "X" date?

13 Senator Muskie. Gary would set its own timetable for
14 meeting goals, subject to the approval of the Secretary.
15 If it failed to meet its timetable then, it would be subject
16 to whatever sanctions there are in the Act.

17 Senator Eagleton. What are those?

18 Mr. Billings. The Secretary has the authority to cause
19 a revision of standards.

20 Senator Eagleton. I am just talking about goals.

21 Mr. Royce. I think in relation to the question you
22 raise, Senator Eagleton, the staff proposal is there would
23 also be in this language a non-degradation feature that
24 "nothing in this section shall be construed as allowing any
25 ambient-air quality to become more polluted than its

1 present state," which is consistent with the position the
2 committee has taken on non-degradation.

3 Senator Eagleton. That still does not answer my question.
4 Maybe I don't understand my own question. It is pretty hard
5 to degrade Gary any worse than it is.

6 Senator Muskie. Can I spell out the relationship of the
7 three again? Would that be helpful?

8 Senator Eagleton. To put it in over-simplistic terms,
9 if you don't achieve certain standards by year "X," something
10 severe happens to you in terms of a penalty or punishment or
11 prohibition.

12 I want to know what happens if Gary or New York do not
13 meet their goals.

14 Mr. Billings. The Federal enforcement provision is the
15 violation of an implementation plan is prohibited. That is
16 an implementation plan for standards and goals as this is
17 presently written. If you violate the implementation for
18 standards, enforcement action can be taken against you. If
19 you violate the goals, action can be taken against you. If
20 a Secretary approves a plan, say, for 1990, then he is not
21 going to enforce that goal until 1990. But the implementation
22 for goals is enforceable.

23 Senator Eagleton. Aren't we kidding ourselves a little
24 about goals?

25 Senator Muskie. We decided on a national basis our

1 responsibility related to health, and we have that. What
2 troubled us then was that without anything more, what we were
3 in effect doing was setting a level of degradation to which
4 clean-air areas could move. We thought there ought to be some
5 mechanism for getting at that within the control of the
6 regions and the states, so we set up these goals which would
7 deal with other effects requiring stricter controls. And we
8 leave that to the regions to decide, subject to the approval
9 of the Secretary.

10 You have been focusing in your questions, I think, or
11 impliedly, on areas that have tough pollution problems now.
12 As to them when you talk about goals, you talk about something
13 that may not be attainable. But, say, the rural areas of
14 Maine or Tennessee or Missouri, you are talking about keeping
15 clean air clean. You are talking about goals that can be
16 implemented within the next year or two. Those are the areas
17 we are primarily concerned with -- the goals of cleaner air
18 than would be required by the health-effect standard.

19 We want to protect that air so those implementational
20 plan, I would say, would be within relatively short deadlines
21 or should be.

22 Senator Eagleton. Isn't a goal a desirable Utopian life
23 toward which we should work?

24 Senator Muskie. No, because we are going to require an
25 implementation plan -- for Gary.

1 Senator Muskie. They may not be able to meet the health-
2 effect standard within three years. That is the structural
3 time. If you want to set a national deadline at a more
4 stringent level, then you can get at that.

5 Mr. Royce. A specific example that might clarify this
6 is a very large and very dirty generating plant in ^{Am}Mexico on
7 Federal land, which could achieve 95 or 99-percent control.
8 They are operating at about 85-percent control on their
9 spreading pollutant for 80 miles, which pollutes the rest of
10 the air. And it is achievable as defined in the Act.

11 Senator Muskie. We ought to at least have in the report
12 a very clear indication that when we are talking about goals,
13 we are not talking about objectives that ought to be
14 postponed indefinitely but ought to be geared to local
15 situations and, in many cases, ought to be achievable within
16 relatively short time frames, because that is what we are
17 talking about. The goal thing gives us flexibility. Maybe
18 it is too much, but we have not been able to develop a better
19 way to do it -- flexibility so we don't degrade the clean-air
20 areas of the country.

21 Still, on implementational plans, go to the bottom of
22 page 12, where you will see listed the other details of the
23 plans -- emission requirements, timetables, schedules of
24 compliance, and so on. (C) is the establishment for operating
25 and monitoring programs. (D) has to do with land use, air

1 and surface transportation, controls and permits. In other
2 words, this would be the means and methods, aside from
3 technology, that ought to be used.

4 Senator Cooper. If a transportation system was not
5 meeting the requirements and standards, then the state would
6 have to have the authority to close it down?

7 Senator Muskie. Or at least to control traffic or slow
8 it down.

9 Senator Cooper. What about interstate transportation?

10 Senator Muskie. The next one covers intergovernmental
11 system.

12 Senator Cooper. The state might not have any authority.
13 I am talking about intergovernmental authority.

14 Senator Muskie. He says it provides adequate provision
15 for intergovernmental cooperation. That would include
16 intergovernmental at the state level as well as at the state
17 level until a plan adequately covers the point you have
18 raised, that the Secretary could not move. Then that would
19 be tied in with the provision later that if the states do not
20 produce implementation plans, the Secretary does. So there
21 is that Federal backup to cover the point.

22 (F) is the provision for periodic reports from a
23 stationary source.

24 Senator Cooper. On page 14, the first paragraph, it
25 provides that reports will be available to the Secretary and

1 other interested parties, including the general public.

2 I suppose the state would determine who the interested
3 parties are.

4 In what way would this be made available to the general
5 public?

6 Senator Muskie. Would it not be easier to state that
7 the report will be a public record, rather than "making it
8 available"? Why don't we do that?

9 (G) is the requirement of adequate state authority.
10 In the event this requires additional legislation, which
11 would push up against the deadline, then the Secretary has
12 authority to approve a portion of a plan until something like
13 this is taken care of.

14 Senator Eagleton. What is "adequate authority"? Does
15 that mean the agency submitting the plan will have to say,
16 "We have authority from the State Legislature or City Council,
17 or whatever the case may be, "to have an 'X' millions budget,
18 and we have 50 air inspectors"? Does that show adequate
19 authority.

20 Senator Muskie. Permanent authority, abatement
21 authority, right of entry.

22 Senator Eagleton. You could have a nice law in
23 Missouri that says, "Thow shalt to to jail if you don't."
24 But if you don't have a budget, that is a lot of pious bunk.
25

1 Will they have to show what budgetary resources Missouri
2 is going to put into this? Do they have to make such a
3 showing, or their plan will be rejected? And why shouldn't
4 they?

5 Senator Muskie. Do you have anything on budget?

6 Mr. Billings. We have adequate manpower.

7 Senator Eagleton. I know, for instance, in Missouri the
8 air-pollution budget was cut by 60 percent and there are
9 six inspectors.

10 Senator Muskie. I guess we should put in personnel and
11 resources.

12 Senator Eagleton. I raise it because Senator Cooper
13 pointed out some of this. If Middleton can reject the plan
14 and say, "Your budget is way too low and your number of
15 inspectors is way too few, and we hereby reject your plan
16 as it is written," they can force a new plan on them. Can
17 they way in the new plan that Missouri must spend \$2 million
18 and have 60 inspectors? And what would Missouri do if the
19 Legislature said, "Go to hell"? I just want to know what
20 happens.

21 Senator Muskie. Then the Secretary would have to
22 provide the inspectors.

23 Senator Eagleton. Then the Federal Government would
24 come in with their inspectors.

25 Senator Muskie. We have grant-in-aid.

Senator Muskie. Maybe the way to get at it would be to provide it in the grant-in-aid section, that if the state fails to come up with an adequate financing plan, then the Federal Government and the Secretary will be authorized to use the state's authorization to establish the program for that state.

Senator Eagleton. It needs to have some clout in it.

Senator Boggs. Wouldn't it urge the states to follow that line?

Mr. Royce. It might tend for them not to.

Senator Baker. Once, again, I find myself in the position of following and being intrigued by, and I think generally intriguing, the observations and fears that Senator Eagleton is making, but wondering how in the world we are going to do this within the framework of a local-Federal partnership. If we are going to meet those problems head-on and the most efficiently, we are going to back off from the whole underlying concept of the bill and start a Federal agency that handles the whole problem, including enforcement at the local level, which I think we have the rightful right to do.

Senator Spong. And which we have been afraid of for three years.

Senator Baker. If we do that, we are adopting a whole new plan. I would have to argue with myself a little before I

would have to consider really a Federal agency with local enforcement authority.

Senator Muskie. Especially with the present limitations on Federal manpower. With this program here you need 600 more than we started with.

Senator Eagleton. If a state's budget is patently inadequate and its manpower so patently thin, the most beautifully written implementation plan is just that.

Senator Muskie. You are supposing a complete failure at the state level. Maybe that will happen. If it does, then the whole structure falls.

Senator Boggs. But you are getting these citizens committees organized. They are organizing up in our way.

Senator Eagleton. Our voters just turned down an income tax by referendum, and the state is busted.

Senator Muskie. All you can do is provide for that contingency. The only funds available are the grant-in-aid programs. The only other answer is to drop the whole business and, as Howard said, set up a Federal structure. I don't think we are about to turn to that. If somebody seriously proposes it, we would have to consider it. But you have to have this requirements of (G) strengthened by the way Tom is suggesting.

In other words, the Secretary ought to look at the adequacy of the program, the personnel and the resources, and

1 try to beef them up. If they just fail altogether, we have
2 to give him some resources to turn to to set up a Federal
3 program.

4 Senator Eagleton. I like works like "funding level."

5 Senator Muskie. Why not say "program level"? That covers
6 personnel and funding.

7 Senator Eagleton. I would like to be specific about
8 funding. Somebody could interpret "program" to mean just the
9 words and not the dollars. Maybe this would help the
10 Missouri Air-Quality Commission in going to the Legislature
11 and saying, "Look, boys, they are not going to take it with
12 the plan we have."

13 Senator Muskie. Why not say "adequate personnel and
14 funding"?

15 Senator Baker. Motivation and outlook.

16 Mr. Royce. Mr. Chairman, there are a lot of sanctions
17 available to the Federal Government that we have not
18 discussed here to reinforce the Federal-state relationship.
19 We have talked about the highway bill linking some of the
20 highways to the control of automobiles. The committee has not
21 focused on that yet.

22 But there are also a number of other grant-in-aid
23 provisions depending on the public support for this. So it
24 would seem to me the committee could go ahead on the present
25 Federal-state relationship and perhaps even into the courts

1 to indicate that if this is not successful, there might be a
2 consideration of withholding of Federal grant-in-aid funds
3 related to problems that are not specifically within the
4 jurisdiction of this subcommittee.

5 Senator Muskie. You could not take the jurisdiction to
6 the Federal Highway Program.

7 Mr. Royce. I submit there are others. There are planning
8 provisions.

9 Mr. Meyer. You more or less have to assume that the
10 states in toto are going to approach the problem with the same
11 kind of intensity that Congress and the Federal Government
12 will approach it, and two years from now we will have a better
13 idea of how the states are progressing. If the states are
14 rejecting it, then there is a question of whether the public
15 cares about it. And then there are a whole raft of things
16 the committee can consider itself.

17 While it is possible the State of Missouri or any other
18 state might not fund it, at this point I don't think that
19 point is a legitimate prognostication of what will happen.

20 Senator Muskie. The whole structure of this bill --
21 and it is in the water-pollution program as well -- is to
22 give the states the responsibility and authority to move
23 initially and for the Federal Government to move in if they
24 fail. That Federal authority to move in if the states fail
25 is in this bill.

1 The only missing link is funding at the Federal level to
2 move in. All you need there is to provide a general
3 authorization at some point in this bill authorizing the
4 Federal appropriations to implement that authority. If
5 keeping the Federal Government out or if retaining the states'
6 authority responsibility and initiative is not enough
7 incentive for the states to do this job, I don't think we can
8 create any incentive.

9
10 I think you are going to have to wipe the whole thing out
11 and set up a Federal bureaucracy. I don't think we want to
12 go to that, and I don't think we should suppose that the
13 states are going to fail on this as long as you have the
14 Federal backup.

15 It seems to me here, first of all, if we do what we say
16 in (G), you have covered the blanks, as Tom pinpointed, and
17 then add an adequate authorization for the Federal Government
18 to move in and set up its own program in the event of failure
19 of the states with money, then you have covered that loophole
20 until we can get another crack at it if there is a complete
21 failure of the state effort.

22 We are doing it in the civil-rights field. Would the
23 staff then provide that general authorization and put in the
24 general language that Senator Eagleton suggested in (G)?

25 (H) is another tough one. (H) would require that the
26 plan provide for a program of periodic inspection and testing
of motor vehicles.

1 Senator Baker. Does that mean every vehicle?

2 Senator Muskie. To the extent necessary. It would be
3 at administrative discretion.

4 Mr. Billings. The Title 2 relative to recall discusses
5 a representative sample. So theoretically under this
6 provision---

7 Senator Spong. Like California.

8 Mr. Billings. Yes, but no. California has a spot check.
9 But that would not provide a representative sample of a model
10 of vehicle. They would have to be more careful in what they
11 spot-checked in order to get a representative sample of a
12 360 cube.

13 Senator Boggs. "to the extent necessary." What does
14 that mean -- once a year?

15 We have an inspection requirement in Delaware now for
16 once a year.

17 Senator Muskie. It should be twice a year.

18 Mr. Guard. Are you talking about new vehicles?

19 Mr. Billings. Once the title has been transferred to the
20 state, it is not under this law.

21 Senator Muskie. It will take some time to move into
22 full implementation.

23 Mr. Billings. We have this under Title 4(B) of the bill.

24 Senator Boggs. Didn't we try to provide something like
25 this in the highway-safety bill? Didn't we try to provide for
a state-wide inspection?

1 Mr. Meyer. The regulations under the Safety Act require
2 a periodic or random inspection of random vehicles by the
3 state. There are still two or three states which do not and
4 absolutely refuse to do so, even though they may lose some
5 highway funds.

6 Senator Baker. Which states are they?

7 Mr. Meyer. Maryland is one. They have inspection only
8 on retitlement. And California will only go for a random
9 inspection operation.

10 Senator Muskie. Why don't we add an amendment to that
11 law to provide that the inspection include inspection for
12 purposes of this Act?

13 Mr. Meyer. The bill is before the committee now and will
14 be under the Executive in September, so there is no reason
15 it could not be discussed then.

16 Senator Muskie. Would it not be better to put it in
17 this bill?

18 Mr. Meyer. You have a cross reference to the safety
19 program in Title 2.

20 Senator Muskie. But that does not now provide for
21 testing for this purpose. It is only testing for safety
22 purposes.

23 Mr. Billings. Under our Title 2 grants-to-states program,
24 we have a cross reference, and that would be the appropriate
25 place to put it.

1 Senator Boggs. But the program has to be tied together.
2 We want to have the plan bring the car in for inspection at
3 one time and include safety and emission.

4 Senator Cooper. There was quite a battle over this. I
5 think some agencies or persons have been designated who can
6 inspect, and they are just usually people who work in
7 garages. I don't know that you can tie these two together.
8 This would have to be done by people who have specialized
9 knowledge.

10 Senator Randolph. I think our problem at least to a
11 degree has been a lack of funds.

12 Mr. Meyer. There has not been that much money
13 appropriated for the safety program to make a dent nationally
14 as far as a particular portion of the safety program is
15 concerned. And the vehicle inspection is one of 16 standards
16 that are presently on the books.

17 Senator Muskie. You can't very well set up two separate
18 inspections sections in each state.

19 Mr. Meyer. All I am saying is it raises a question which
20 we have discussed at the state level with respect to
21 inspection under Title 2 of this Act. And the question is,
22 how much money are we going to be able to pump into this thing
23 to see how it works?

24 Senator Muskie. We have that problem with the whole bill
25 if we don't get the appropriations to provide the manpower.

1 We have to make that point very strongly on the floor of the
2 Senate in the report.

3 This thing is not going to happen just because you write
4 a law. That is true at the state level, too. These deadlines
5 can't be met, which we have already gone over, the first
6 12 pages. They can't be met with the present manpower of the
7 National Air-Pollution Control Administration. It just cannot
8 be done.

9 Senator Randolph. I think at this point in Congressional
10 history, the job of this type of authorization, which is an
11 advance beyond what we have done in the past -- and others
12 will follow -- really now you are at a crisis point which
13 involves not so much authorization as funding to carry out
14 the provisions of whatever we have done or whatever we are now
15 going to do.

16 I think this is a problem which I do not know how we are
17 going to get the Congress to realize its seriousness. But
18 I think we are all going to have to pitch in as we have never
19 done before to bring the monies into being to make these
20 commitments that we make through an authorization measure
21 really meaningful.

22 I say it rather offhandedly, but I would like to see it
23 wrapped up in both this bill and the highway bill. Is there
24 anything wrong with that? I am just asking.

25 Mr. Meyer. Especially since the bill that was introduced

1 by your yesterday and co-sponsored by a number of members here
2 provides for financing, and we will be able to avoid the
3 general appropriation problem.

4 Senator Boggs. Exhaust fumes has something to do with
5 health and safety.

6 Mr. Meyer. With respect to these implementation plans
7 that we are going through now, should there be specific
8 language in this to require that the Secretary make a report
9 to the committee on what it is going to cost to administer
10 these programs so that when we get to the stage of
11 implementation that the Federal Government will come up with
12 enough money to make the thing go?

13 Senator Muskie. I don't want to provide any waiting
14 period for developing cost estimates.

15 Mr. Meyer. Obviously, the funds included in the bill
16 which are cut off before the implementation plan comes into
17 effect will not be near enough to carry this program. All
18 I am saying is to be required by a date set prior to the next
19 time the committee has to authorize appropriations to carry
20 out this appropriation and we have a firm cost estimate as
21 firm as possible to carry out this program of the
22 implementation plans.

23 Senator Muskie. By that time it will be moot. We will
24 either have moved on this program, or we will not have moved.
25

1 Mr. Meyer. My point is, it will be 17 months or
2 30 months before the implementation plans are approved. At
3 the time they are approved, the Federal share of carrying out
4 the plan as the Federal share of this program is going to
5 take a big step up from the authorizations contained in this
6 Act. Exactly what that step will be, we will not know until
7 we get some ideas from the Secretary as to what he estimates
8 what the costs will be.

9 Mr. Billins. We may have to come back a year from now
10 and authorize additional appropriations for 1973 and 1974.

11 Mr. Meyer. It is one thing to pay 75 percent of the cost
12 of doing the planning, and it is another thing to pay 75
13 percent of the cost of carrying it out.

14 Senator Muskie. Let's ask the Secretary in the meantime
15 before the floor debate to produce cost estimates. Let's
16 get in some authorizations now. This business of waiting,
17 we do not have that kind of time.

18 I think that covers the substance of the implementation
19 plan.

20 (I) is provision for revision of the plan. (J) is the
21 requirement that the plan identify the region within which
22 the plan applies, including the boundaries of the region.

23 (K) is a new item, which provides for the public hearing to
24 consider adoption of more restrictive ambient-air-quality
25 standards than the national ambient-air-quality standards.

(B) is authority for the Secretary to develop the implementation plan if the state fails to do so. (C), on page 16, is a review of existing plans to insure that they meet the requirements of the new law.

Incidentally, have you corrected the "90 days"? The "90 days" does not do the job. Check it out.

Then we get to the provision Tom asked about earlier at the bottom of page 16 and the top of page 17.

Senator Boggs. At the bottom of page 16, Mr. Chairman:

"Whenever, on the basis of surveys, studies, investigation, or reports, or any information otherwise made available to him, the Secretary or his authorized representative finds that, in any air-quality control region, an approved implementation plan will be, or has been inadequate to achieve national ambient-air-quality standards promulgated pursuant to this Act, he shall notify the appropriate state or states. And unless such state or states revises such plan within 90 days after receipt of such notice, or if such revision is inadequate, the Secretary shall revise such plan in accordance with the provision of subsection (b) of this section."

Senator Spong. I think that is just the part that says the Feds move in. Senator Eagleton is concerned about the impossibility of performance.

Senator Boggs. There is no time to achieve it. Is that the point?

1 Mr. Brayman. The staff was sure that if everone was
2 acting in good faith and the Secretary approved close to the
3 time the implementation plan to achieve the standard, if
4 they find it is inadequate, then they could revise it. There
5 is no time extension given to those who acted in good faith,
6 but those who did could put on the extra equipment so they
7 would have tighter control.

8 This is the situation with the Act. This is where they
9 did do what they were supposed to do. But it is inadequate,
10 and there is no time given to do what in addition has to be
11 done.

12 Mr. Royce. It is not the actual installation of
13 equipment.

14 Senator Muskie. It was the intent to write that in here.
15 .We need here the authority for the Secretary to provide
16 the additional time which may be necessary.

17 Senator Boggs. "No extension is granted" even though
18 the polluter acted in good faith after revision?

19 Senator Muskie. What should that be? How much of an
20 extension should he be allowed to give?

21 Senator Boggs. I don't know. What would be consistent
22 with everything else we are doing?

23 Senator Eagleton. Are we talking about the plans that
24 Middleton has already approved under the old law?

25 Senator Muskie. We are talking about any deadline, and
that includes the national deadline.

1 Mr. Billings. We are talking about the plan submitted
2 pursuant to this Act or the old plan as reviewed and
3 approved. He has to go through the old plan to make sure it
4 meets the deadline. If he finds emission data was not
5 accurate, that the ambient-air-quality data was not accurate,
6 the information base was not good enough, and you find
7 2-1/2 years down the pike that the emission requirements
8 are impossible, done in good faith by everybody but will not
9 implement that national standard as provided, then additional
10 controls will be proposed.

11 Now, how long a time is provided? How long should the
12 deadline be extended?

13 Senator Eagleton. Did Middleton goof in the first plan,
14 or what?

15 Mr. Billings. A goof was on the information base. The
16 diffusion article might not have been accurate, or the
17 overall information in the area may not have been adequate.

18 The best example of this is the recent revision of the
19 test and, therefore, the standards on automobiles. Because
20 of new capability in testing, they had been able to revise
21 the base of emissions up for automobiles. Therefore, they
22 revised the standard, the point being that as they learn
23 more, they are going to know more in relationship of
24 emissions to ambient air. And they may tighten the standards
25 along the way.

1 Senator Eagleton. People and businesses that relied on
2 the old standard will be allowed to adjust to the new ones.

3 Senator Randolph. Off the record.

4 (Discussion off the record.)

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1 Senator Muskie. On the question we were discussing,
2 how much more time should be permitted to meet any deadline?
3 It seems to me another year or up to another year is long enough.

4 Mr. Guard. We have language in the typewriters to do
5 that.

6 Senator Muskie. It is 25 percent more time.

7 (e) (1) (A) is next. This is authority for the government
8 to petition for relief from the deadlines. Does this follow
9 on from the one we dealt with?

10 Mr. Billings. This would not be where the plan failed
11 but where it was not possible to implement the plan.

12 Senator Muskie. There would be appeal to the District
13 Court of the District of Columbia Circuit.

14 18 is the criteria for relief which the court would be
15 given to consider. There are three of them.

16 Senator Baker. And they are cumulative.

17 Senator Muskie. No, the first two are cumulative and
18 the third one is an alternative.

19 The one that troubles me is (A) particularly. I find it
20 hard to reconcile that language with the fact that you are
21 dealing with health effects standards. In effect, they are
22 health effects standards that have not been met.

23 What kind of standard can there be that the health is
24 being protected?

25 Senator Baker. I think it is self-defeating.

1 Presumably, if you could protect the public, you would
2 not grant the exception to begin with.

3 Senator Muskie. Are (B) and (C) sufficient reasons to
4 grant relief?

5 Senator Baker. Section 119 is the section dealing with
6 national security requirements. It permits the Secretary
7 to make exemptions from plans on Federal facilities.

8 Senator Muskie. On the health questions, are there some
9 other formula we could consider as a substitute for (A)? Are
10 there parameters within which you could put up with some
11 continued deleterious health effects provided they were not
12 excessive? In other words, (B) seems to me to open the door
13 too wide.

14 Senator Baker. (B) is too wide. I think we are going to
15 have to deal with subjective and elastic requirements, however.
16 In effect, what we are going to do if we adopt this section
17 is vest in the judiciary the authority and the responsibility
18 to weigh and balance equities. That is the possibility of
19 granting an extension in the absence of effective devices and
20 techniques even knowing that there may be some consequential
21 bad health effects. I think the reason for this section, if it
22 is justified, is bottomed largely that the judiciary is better
23 suited to weigh those equities than we.

24 I would propose an alternative in subsection (A) which
25 might substitute section (B) for (A) and have a new section which

1 would say something in every such case the court would take
2 into account the potential health hazards, their extent, their
3 permanency, the temporary nature thereof, together with the
4 technical considerations required by subsection (A) above.
5 That is just a rough effort at trying to frame an area of
6 responsibility and latitude for the judiciary to balance
7 equities in a particular case.

8 Senator Cooper. It seems to me that the health of a person
9 is going to be affected if this extension is given. In sub-
10 section (4) the court grants it only if it is essential to
11 the large public interest and the general welfare of the
12 United States.

13 In other words, it is a case where although some people
14 might be affected adversely, you would have to supersede it
15 on a much larger and broader interest.

16 Senator Baker. I think that may be so, Mr. Chairman.
17 I think Senator Cooper is probably right. I think section (4)
18 probably says all I tried to say for a new subsection. To say
19 that the court can grant this relief only if it determines such
20 relief is essential to the public interest and the general
21 welfare of the United States is a requirement for the balancing
22 of equities. I would be happy just to strike out subsection (A)
23 and make subsections (B) and (C) (A) and (B).

24 Senator Muskie. Then you need to strengthen (B) which
25 talks about methods, systems devices or techniques. There are

1 also policies which could not be described as any one of
2 those four that could be invoked if public health interests
3 were to such an extent as to be overriding.

4 Senator Baker. May I make an observation? From a
5 drafting standpoint, page 18, paragraph (4) would read at the
6 end, "after finding --" and subparagraph (B) "that methods;"
7 or subparagraph (C), so it clearly ties the requirements of
8 present (B) to the cumulative requirements of paragraph (4).
9 Then you have to read them together to have a single requirement.

10 Incidentally, on subparagraph (C) I am not happy with
11 that, either, when you get to it. I have a specific situation
12 in mind in Tennessee. I am convinced we have a plant there
13 which is the biggest polluter in the world, but I would want
14 to see any exemption against the United States severely
15 limited.

16 Mr. Billings. The President has to make this in the
17 paramount interest of the United States.

18 Senator Baker. It might be in the public interest not
19 to spend \$80 million but that is about what it is going to
20 take to clear up that plant. They are, in effect, rebuilding
21 in order to have a closed system. It emits sulfuric acid
22 and a great exotic array of other masses, solids and gases.
23 It got so bad out there that the fumes were melting nylon
24 stockings.

25 Senator Boggs. Has it improved any?

1 Senator Baker. Some, but it is still not under control.

2 Senator Muskie. How about something like this, Howard --
3 how about rewording (A) as something along this line -- I don't
4 have the exact words -- "after finding that substantial steps
5 have been or can be taken to reduce the adverse effect" upon
6 it. In other words, they have to take whatever steps may be
7 possible. We wouldn't be content with absolutely no move.
8 There has to be a substantial effort to reduce the adverse
9 effects.

10 Then (B) and (C) and then you have (5) following: "If
11 the court determines that the health of persons residing within
12 the region will not be protected by available interim procedures
13 in such air quality control region during the period of
14 extension of the statutory period, it shall issue permanent or
15 temporary injunctions," and so forth.

16 Senator Baker. A showing, then, that every reasonable
17 step is being taken to minimize and you do not have the systems
18 or devices to do any better. That would be the thrust of the
19 revised section.

20 I think that is good.

21 Senator Muskie. I would sharpen (B). I would say means
22 to control emissions are not available. That takes into account
23 the policies as well as technology and techniques.

24 Senator Boggs. Mr. Brayman has a point here.

25 Mr. Brayman. Mr. Chairman, isn't (5) directed, as it is

1 now written, to the original (A) and doesn't (5) also have to
2 be rewritten to conform with new (A)? I as I read (5) now
3 there is the assumption that there would have to be some
4 health effects.

5 Senator Muskie. In (A) the way I worded it, not only
6 that substantial efforts have been taken already but that
7 additional efforts can be required.

8 Mr. Brayman. But you wouldn't achieve the standard, but
9 near the standard.

10 Senator Muskie. (5) is simply giving the court authority
11 to insist upon the additional things that the court finds
12 could be taken to further minimize the effect on health.

13 Mr. Billings. Also, if the court decides not to extend
14 the deadline, then he has this authority to act to protect the
15 public interest. He has to make a determination one way or
16 the other or he says it is not in the interest of protecting
17 the public health and safety.

18 Senator Baker. I think he can either say yes, I will
19 give the exemption because you met the test or no, period.

20 Senator Muskie. If they say no, then you have to come back
21 in under the enforcement section of the statute.

22 Mr. Billings. Paragraph (5) says if he does not grant
23 the extension --

24 Senator Muskie. It does not say that.

25 Senator Cooper. It seems to me (4) and (5) are contradictory.

1 Senator Muskie. You are talking about the period of
2 extension.

3 Mr. Billings. I am sorry, the intent of this was if
4 the court determined not to grant the extension, then he would
5 move to issue the necessary orders to do the job immediately
6 because, obviously, something has got to be done if the
7 extension is not granted.

8 Senator Baker. Why would it not simply revert to the
9 Secretary under the Act to do whatever the Act permits him to
10 do? It seems to me this is a terrible deterrent to get an
11 exception.

12 Mr. Billings. That was the staff's intent, so I plead
13 guilty.

14 Senator Muskie. The staff did not implement its intent.

15 Senator Cooper. I think you have a contradiction where
16 (4) provides for the granting of relief under certain circum-
17 stances. That has the adverse effect upon health but (5) is
18 contradictory.

19 Senator Baker. I think (5) should be stricken.

20 Senator Muskie. This is what makes the most sense to me --
21 what is a petition for relief that should only be given in
22 rare cases? Now, what are those rare cases? First of all,
23 a substantial effort should have been made already to protect
24 health. I don't think there is any situation so hopeless
25 that something could not have been done. Whatever could have been

1 done should have been done. It is conceivable that additional
2 steps to protect the public health might suggest themselves.
3 The court should be in a position to insist upon those steps
4 and ought to be able to issue necessary decrees to implement
5 that finding.

6 Finally, there ought to be a finding that means to
7 control emissions are not available or have not been available.

8 It seems to me those three are the kinds of issues that
9 should be before the court with the authority in the court to
10 act on them. I think that is about as tight as you can make
11 it.

12 Senator Baker. You might be able to put in another
13 requirement which would be to require the court to keep it
14 on the docket and review it in 12 months.

15 I guess subparagraph (6) probably has that effect.

16 Senator Muskie. If you buy the concept, then we can ask
17 the staff to rewrite (4) and (5).

18 Mr. Billings. As I understand (5), it would be the
19 authority for the court to act to implement anything that
20 it found to be action that could be taken to reduce adverse
21 effects during the extension period.

22 Senator Cooper. I think you could follow the language
23 in (6), if the court can grant such relief it shall issue such
24 orders.

25 Mr. Jorling. In subparagraph (6) the court may modify

1 any implementation plan to achieve the national ambient
2 air quality standard. It could be considered duplicative.

3 Senator Muskie. I think the staff has the reading on
4 your intention.

5 Senator Eagleton. I understand your language would
6 substitute means for devices and techniques. I am for the
7 word "means".

8 I pose this hypothetical to you: Would the court in
9 implementing (4) (B) be limited to this option; that is, he
10 could order better emission control techniques put on stationary
11 sources or he could find out if there were an adequate number
12 of then existing devices to go on automobiles, et cetera, but
13 he would not have the authority, for instance, to order that
14 cars no longer be driven in New York City? Your language would
15 say means to control emissions. That is, means of controlling
16 either stationary or moving sources of emissions. Should it
17 not be broader, to say means to achieve the required levels
18 of ambient air quality which is a broader authority in the
19 court which could include not only emission control devices
20 but also outlawing, as it were, by court order automobiles in
21 New York City except ambulances, police cars, garbage trucks
22 and a few others.

23 Mr. Billings. I think it should include reference to
24 control of emission.

25 Senator Baker. You are losing sight of the fact
that this section is for one purpose only and that is for a

1 judicial determination on the facts as they may exist in
2 the future as to whether or not there should be a compliance.

3 Senator Spong. I am concerned with what Senator Eagleton
4 was talking about, and you talked about earlier about (C). It
5 looks to me like we are going further than that if the court
6 has powers here to enjoin and it might get to what Senator
7 Eagleton is talking about.

8 Paragraph (5) is pretty broad here.

9 Senator Muskie. I thought we agreed to get away from
10 the language here and I was to direct the staff to implement
11 a basic concept which we are discussing. To the extent that
12 we are discussing the language to help sharpen the concept,
13 all right, but I think what we seem to have agreed on is,
14 (1), that the opening five lines of (4) or (5) and then
15 (A) ought to be changed to provide that the court must find
16 that substantial efforts have been made or taken to reduce
17 the effects on health and that such other steps as may be
18 disclosed in the hearings that could be taken are taken as a
19 condition to granting relief.

20 That is why (5) is imposed.

21 Senator Spong. Maybe I don't understand this, but in
22 (5) I am talking about your stinking plant in Chattanooga
23 that the Federal Government owns or the automobiles in New
24 York, if they are within this thing. How much power does
25 a court have for the period of extension with the language you
have in there now under (5)?

1 It says issue permanent or temporary injunctions, re-
2 straining orders.

3 Senator Muskie. The court has the whole problem before
4 it and it has the authority to grant relief, conditioned in
5 any way that relates to the purposes of the Act. In other
6 words, the State is coming in asking for relief from a plan
7 that is designed to achieve health levels of pollutants.

8 Senator Baker. I originally suggested judicial review
9 solely as an escape hatch, a safety valve so that some
10 independent agency, in this case the Judiciary, could decide
11 when a situation was impossible of compliance which we can't
12 anticipate as legislators but a court can decide that it is
13 impossible to perform by the date set.

14 It was my original view that if they decide that you
15 can't comply, that the technology wouldn't permit you to
16 comply and that weighing all of the equities including
17 health hazards and the extent and permanency of the health
18 hazards they can grant an extension for a year. If they
19 decide it is poppycock, then they just deny the relief.

20 That would be the end of the court's involvement. The rest
21 of it I would like to reserve out for us to deal with. It
22 may be necessary to give the court ancillary jurisdiction to
23 issue injunctions and so forth but I believe we can do
24 the rest statutorily.

25 Senator Eagleton. You spelled it out neatly, but maybe

1 too neatly.

2 The court, in trying to decide whether New York City
3 or Chattanooga can comply, the court has to hear all kinds of
4 evidence about Con Ed, the nature of the power shortage,
5 the nature of the industry and the nature of how many
6 are coming and going. The court could say after hearing all
7 of the evidence from the traffic commissioner and the automobile
8 companies, and it would be a pretty long case -- as judge so
9 and so, I say New York can comply. Let's say a million cars
10 come a day in New York, making up a figure. Based on the
11 evidence, I have heard, if only half a million come in,
12 New York can comply and, therefore, I will put as part of my
13 order that the New York traffic commissioner devise a plan
14 by which only half a million cars come in.

15 Senator Baker. I think the first point is well taken.
16 If the court decided it was possible to meet the deadline
17 by restricting entry of cars into New York City, the court
18 would grant the relief sought.

19 Senator Eagleton. I want it to be broad enough to
20 let him consider that kind of evidence. The way (4)(B) is now
21 written, the court could only consider emissions coming out
22 of both stationary and movable sources: the court could not
23 consider the eradication of part or all of the movable sources.

24 Senator Muskie. If the court finds if they reduce
25 the automobile traffic by the amount you suggested, then they

1 could meet the deadline, but reducing it that number is
2 unreasonable, so it is prepared to grant relief provided they
3 cut out 200,000 cars as a condition. It does not meet the
4 deadline but it gives them some relief conditioned upon some
5 better performance.

6 Senator Eagleton. Howard does not want that.

7 Senator Baker. That defines the two issues. In the case
8 I have described, I am using the court for a limited function,
9 to decide on the facts of a future situation, whether an
10 extension should be granted or not.

11 Tom's extends the court all the way into the business of
12 taking total jurisdiction in the case on the theory that
13 once they got it they could do anything they wanted to.

14 Senator Eagleton. Like a desegregation plan.

15 Senator Spong. You said it. I could see it coming on.
16 He said it.

17 Senator Baker. The Chairman is characteristically
18 moderate. He is in the middle, as moderates usually are in
19 the middle. He says, in effect, if you can meet the requirement
20 of it being essential to the public interest to cars still
21 coming into New York, we will let enough cars come in
22 so it does not do a great deal of damage but that is the
23 extent that we are going to go. I really believe -- and I
24 believe this very strongly -- that we are going to create a
25 Frankenstein monster that I thought up if we don't limit

1 the court's role to just deciding on the facts of the future
2 circumstances that the deadline ought or ought not be extended
3 for one year on carefully drawn specified statutory grounds.

4 Senator Muskie. They come in for relief and they will be
5 fully informed. The court will say, my first responsibility
6 is the public health. You fellows have done certain things to
7 reduce the impact of public health, but I am convinced there
8 are some other things you can do.

9 Now, I won't give you relief because that is my
10 primary responsibility unless you are prepared to do these
11 additional things that I think you can do within the time limit.
12 If you eliminate that, he is going to have an either/or decision.

13 Senator Eagleton. How many extensions can they get?

14 Senator Cooper. If the court grants such relief, it
15 shall issue -- and then go ahead with your order -- to secure
16 protection that is possible for the duration of the period of
17 relief granted.

18 In other words, take those steps that are possible to take
19 to protect persons during that stage. If you want to give him
20 the power that Senator Eagleton wants, of course, you can
21 do that, but I don't know that you will want the court in it
22 forever.

23 Senator Muskie. John has said it better than I have.

24 Senator Boggs. Are we committed finally to the court
25 as a way to meet this situation?

1 Senator Eagleton. It is either the court or us. I am
2 for the court.

3 Senator Boggs. The court or the Congress; that is true.

4 Give the Secretary provision to grant a delay and have
5 him write in a report to the Congress relating to the delay,
6 such as national policy, and the action and the time involved,
7 and so forth. Keep the court out of it. Once you get in court
8 you get everybody involved and once the court gets jurisdiction,
9 unless you write it in there specifically, they will keep it
10 almost forever.

11 Senator Eagleton. I am just trying to think ahead.

12 If this environmental thing keeps mushrooming and
13 we get to the point where people start gagging such as the
14 Donora, Pennsylvania, type of thing, and the Secretary of
15 HEW, be he Democrat or Republican -- four or five years from now
16 New York is in violation of the health standards and can't
17 meet the deadlines, he is in an impossible situation, he does
18 not possess the lifetime tenure of a public judge. At least
19 in a hearing in court the dogooders and the dobadders will
20 have their day in court. The environmentalist will die
21 on the street. Con Ed says we can't comply. A federal judge
22 with lifetime tenure would be to decide. As much as
23 I don't want it on the back of Congress, I think it is unfair
24 to put it on the back of a Secretary of HEW.

25 Mr. Meyer. Basically what you have is an ex parte

1 proceeding. You have a Governor who comes to court who says,
2 "for these reasons, I would like to have you give us an extension."
3 At this point the court has that presentation by the State
4 and unless you start opening up, nobody else except the
5 Secretary gets into court to give the court advice.

6 Since we are dealing with only one court, the District
7 Court for the District of Columbia, they would have a very
8 difficult time trying to supervise these things elsewhere.

9 Senator Boggs. And only the States can come in?

10 Mr. Meyer. That is right. He does not sue anybody. He
11 just goes to court and asks for relief. It is like a lot of
12 other ex parte proceedings. They either make the case or they
13 are out. You have to limit how much further the court can
14 go or else you are going to put the court of appeals in an
15 impossible situation when it comes to supervising these things.

16 Senator Eagleton. Can a State come back year after year
17 and get further extensions?

18 Mr. Jorling. It is not limited maximally. It simply states
19 subject to a renewal petition for one year.

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1 Senator Muskie. It says "may file within one year, but
2 not less than six months before the expiration of the period"
3 After relief is granted, that period will have passed. This
4 would not apply to the period set by the judge.

5 Mr. Jorling. The court may grant renewals for additional
6 one-year periods only after the filing of petitions. That is
7 on page 19, subparagraph (6).

8 Senator Eagleton. There is a new case in New York and at
9 the end of the year and there is a new Governor and he gets
10 another one year and so on and so on.

11 Senator Muskie. Does (C) give citizens an opportunity to
12 intervene?

13 Mr. Billings. It does not specifically so state.

14 Mr. Jorling. The only intervenor we have provided for is
15 the Secretary.

16 Senator Muskie. Should we make it broader?

17 Senator Eagleton. If you believe in the class action con-
18 cept ---

19 Senator Muskie. You have an adversary proceeding if the
20 Secretary intervenes.

21 Senator Eagleton. Suppose he intervenes on the side of
22 the state.

23 Mr. Meyer. He is just brought in to present argument on
24 the question. By statute you are requiring him to come in and
25 give the court advice not as a party, but as an expert.

1 Senator Muskie. It says, ". . . shall be permitted to
2 intervene."

3 Senator Cooper. Relief can't be granted unless he does
4 come in.

5 Senator Eagleton. He is the party who has to be ordered
6 to do something or not do something.

7 Mr. Jorling. It is mandatory.

8 Senator Muskie. The Governor is permitted, but with the
9 Secretary it is mandatory. Couldn't we make the Secretary an
10 intervenor and say he shall intervene?

11 Senator Baker. Why not make him a defendant?

12 Mr. Meyer. Item 3 does.

13 Senator Muskie. Is that different from making him an inter-
14 venor or party to the action? Shall we make him an intervenor?

15 Mr. Meyer. I think you have given him the same kind of
16 political problems.

17 Senator Muskie. He has a responsibility to enforce the
18 plan. If he has that responsibility and he would have that
19 responsibility if the deadline passed and if he were to use the
20 enforcement powers of this bill -- all I am saying is since he
21 has that ultimate responsibility, why should he not be made a
22 party to this petition so he can enforce his responsibility as
23 a party to the action?

24 Senator Eagleton. That would still not necessarily be an
25 adversary proceeding, Mr. Chairman, because he is obliged to

1 have a five-year-plus-a-few-months deadline. He may say five
2 years and a few months from now I agree with the Governor of
3 New York. I agree that New York City can't in any way, shape or
4 form comply with that plan.

5 Senator Muskie. That is conceivable.

6 Senator Eagleton. And if he said I think they are 100 per-
7 cent right, then the only evidence would be what is presented by
8 New York and if HEW agrees and presents it ---

9 Senator Baker. In effect, they would have a sweetheart
10 clause. Another problem is on the eve of the expiration of this
11 deadline, the Governor comes in and files a lawsuit and you
12 have another five years of litigation. I would like to see this
13 further modified to provide that the suit had to be filed not
14 less than one year from the date of the time limit and concluded
15 by the date of the time limit with a judicial determination.

16 If you put a time limit on it, they could have intervenors,
17 association intervenors and anything you wanted as long as you
18 say if you are going to test the expiration date under this sec-
19 tion, the suit has to be filed not less than one year before the
20 deadline and it has to be concluded by final judicial determina-
21 tion on or prior to that date.

22 Senator Spong. So it has to be done in a year.

23 Senator Eagleton. Final determination in the court of
24 appeals. You are not anticipating certiorari.

25 Senator Baker. That would give us a timeframe to permit

1 intervenors and anyone else to be sure it is an adversary pro-
2 ceeding.

3 Senator Muskie. It seems to me when you tell a court he
4 has to complete litigation in a year, you are asking him for
5 something that is beyond our control. The court knows its
6 operations, but I am for requiring the one year and the suit to
7 start one year from the deadline. The court is aware, then, of
8 the deadline and he will try to wind it up before the deadline.

9 Senator Baker. I think it should be in a trial court instead
10 of appellate court and there should be a statutory limit on how
11 long the trial court can have it and then simply provide it goes
12 through the appellate steps as expedited steps. ,

13 Senator Eagleton. With a three-judge trial court.

14 Senator Baker. That would be a good idea and deny them the
15 right to a jury.

16 Senator Eagleton. I would buy that.

17 Senator Boggs. Limited to the District of Columbia courts?

18 Senator Baker. I am open on that procedure.

19 Senator Cooper. Then Con Ed would be permitted to inter-
20 vene?

21 Senator Baker. Yes.

22 Senator Eagleton. Not as this is written now, but I think
23 they should be and the Ladies' Garden Club of Long Island.

24 Senator Baker. And the Citizens Committee for Wilderness
25 Planning.

1 Senator Eagleton. And the Sierra Club of New York.

2 Senator Muskie. Does this broader concept meet the tenta-
3 tive approval of the committee? I think we need language now.

4 Senator Randolph. I will agree to that.

5 Senator Baker. Are we talking about my latest brainstorm?

6 Senator Randolph. Eagleton's and yours and Spong's and
7 Muskie's.

8 Senator Eagleton. There is a difference between the yes and
9 no approach and the Eagleton-Baker-Cooper intermediate approach.

10 Senator Muskie. Let me put these series of questions and
11 see if I cover all of the contingencies and I act only on my
12 sense of the reaction of the committee to the discussion.

13 One, the basic structure I outlined at the outside, which
14 is find substantial effort to improve health, that he be given
15 authority along the lines suggested by Senator Cooper "to require
16 such additional steps to minimize the health effects of the
17 extension and, third, that he find that the means were not avail-
18 able to do better.

19 Secondly, that the appeal be to the level of the trial
20 judge ---

21 Senator Eagleton. Three judges would sit as a troika.

22 Senator Baker. All you have to say is it would be tried
23 as if a constitutional question and that gives you a three-judge
24 court.

25 Senator Muskie. With the right of the state to intervene.

1 Senator Eagleton. All interested parties, potentially
2 adversely affected and class.

3 Senator Baker. What is the reason for having class suits
4 for a suit that does not seek damages?

5 Mr. Billings. The effect on citizens is not class.

6 Senator Baker. One citizen can get relief as well as a
7 whole class if it is just injunctive relief.

8 Senator Muskie. The public would be interested in main-
9 taining the deadline.

10 Senator Eagleton. Would Joe Citizen in New York, who lives
11 on Park Avenue in an apartment building and just breathes air
12 and walks around New York, could he intervene? Would he be a
13 party-in-interest?

14 Senator Baker. If he breathes air, he is and if he wants
15 to spend the money to hire a lawyer. You are not seeking
16 damages.

17 Senator Muskie. Does the committee want the staff to pro-
18 ceed?

19 Mr. Royce. Was it the view that there would be a time
20 limit, as Senator Baker suggested?

21 Senator Muskie. No time limit on closing.

22 Senator Baker. At least a year before the expiration.

23 Mr. Billings. If the case is initiated and the court has
24 not completed action at the time of the statutory deadline has
25 been reached, which triggers a variety of enforcement actions

1 including the citizens' suit provision against the Secretary,
2 against violators of the plant, what happens?

3 Senator Muskie. The court would have to issue an appro-
4 priate order.

5 Senator Baker. That is not unusual.

6 Mr. Billings. The court would issue a temporary decision
7 pending a yes or no decision.

8 Senator Baker. They would say "yes" or "no" and it is
9 appealable.

10 Senator Muskie. Let me ask you lawyers. I objected to say-
11 ing the court must finish this within a year after the suit is
12 brought. Let me ask whether or not the existence of the dead-
13 line imposes that kind of stricture upon the court?

14 It was my impression the court could issue a temporary stay
15 of the deadline; and if in his judgment that should be done, he
16 should be in a position to do it. If we can't anticipate all
17 of the other circumstances that we are discussing, how can we
18 anticipate that one?

19 Mr. Billings. If the court was required to issue an order
20 before the end of the year and then if the court issued a "no,"
21 that would not operate as a stay against the national ambient
22 air quality standards, even though somebody would want to take
23 it on to the superior court.

24 Senator Muskie. That is a decision for the court to make.
25 The court has heard the case a year less a day and the deadline

1 is tomorrow. Doesn't the court have authority to issue temporary
2 stays and permit it to finish its job?

3 Senator Eagleton. How about a temporary order not to exceed
4 X months?

5 Senator Boggs. Senator Randolph has to leave and he has
6 some points to bring up.

7 Senator Randolph. I would only say I will be unable to
8 remain here this evening. If our Chairman is thinking about
9 staying late, I will have to give a proxy in matters, of course,
10 on a tentative basis.

11 Senator Muskie. It is very difficult to get this committee
12 together.

13 Senator Randolph. I don't want to impose myself. I am just
14 saying if you are going to stay, I want you to understand my
15 situation.

16 Senator Baker. I can stay maybe another 30 minutes at the
17 most.

18 Senator Randolph. I will be glad to come early in the
19 morning or do whatever I can to be helpful, but I find my presence
20 here something I can't handle right now.

21 Senator Muskie. I appreciate all of the difficulties. I
22 have them myself. We are on page 16 of a 73-page bill, and we
23 are still just in subcommittee. We have had X number of execu-
24 tive sessions. They have been helpful and useful to help us all
25 sharpen our ideas, but we are going to be subjected before long

1 to severe criticism for not getting this thing moving.

2 Senator Randolph. Is it your thinking you will remain
3 here?

4 Senator Muskie. I am not very optimistic about being able
5 to finish it if we get hung up on many more of these things. If
6 we continue at this pace, we will not have this done and out of
7 subcommittee by Labor Day.

8 Senator Baker. I think when we get out of this point and a
9 few others, we will go pretty fast.

10 Senator Muskie. The staff tells me it is God's own job to
11 try to get this committee together. It seems to me we have this
12 issue sufficiently developed so that we can't really get more
13 precise fixes until we see staff language.

14 Senator Eagleton. You don't have the fix on the dichotomy
15 of opinion between myself and yourself and Senator Cooper and
16 Senator Baker on the other. Is the court going to say "yes" or
17 "no" on the extension or can he say "yes," but do these things
18 which would be a condition?

19 Senator Randolph. Mr. Chairman, I am very happy to give you
20 my proxy and to have the staff proceed to work on the language
21 and then to have a clean print, as I understand it. Is that
22 what we are thinking of?

23 Mr. Billings. Introduced as such ---

24 Senator Muskie. And made available publicly.

25 Senator Randolph. I want to expedite the manner and the

1 Chairman has my appreciation as one member of the subcommittee
2 to move it. All I am asking for is advice.

3 Senator Muskie. I am not pressuring anybody, but today is
4 the 18th and that gives us two weeks before Labor Day to get the
5 thing out of full committee. I think we had better get it out
6 of full committee before Labor Day or else we are subject to
7 considerable criticism.

8 Mr. Royce. I think the staff has resolved most of the other
9 issues.

10 Senator Muskie. I think if we get by this one, I think we
11 will find ourselves moving through it fairly rapidly.

12 Senator Randolph. You have my proxy, Mr. Chairman.

13 Senator Muskie. I gather the only point at issue and the
14 rough consent we have spelled out here is whether or not the
15 court should have authority consistent with the language suggested
16 by Senator Cooper or Senator Baker or Senator Eagleton. Why don't
17 I put Senator Cooper's proposition in since it was sort of the
18 middle position, and see what kind of support we get.

19 The idea here is the court would give authority to insist
20 upon such additional measures as might be taken to reduce the
21 adverse effects on public health in the interim period.

22 Senator Spong. I am not going to take much time, but
23 this is in the background of my thinking in all of this. I see
24 a great deal of politics in this where there is going to be a
25 backlash. You and I were discussing it riding back over from

1 the Capitol. The Governor will want to put the monkey on some-
2 body's back for the situation whether it be in Chattanooga,
3 Gary, Indiana or any other place. This is why I started talking
4 about this Section (5) here.

5 We may well here be turning over ultimately a great deal of
6 the implementation of this program to the Federal court system.

7 Senator Muskie. We are not talking about Section (5) in
8 the Cooper proposal.

9 Senator Spong. I understand that, but in the overall pic-
10 ture of this, I foresee Governors asking for delays. This is
11 what I am trying to say. If ultimately it is all laid out that
12 the courts are going to be the ones to say, well, in Gary you can
13 run eight blast furnaces, but you can't run sixteen ---

14 Senator Muskie. This is not the Cooper proposal.

15 Senator Eagleton. Yes, it is. It would be in the court's
16 discretion.

17 Senator Muskie. What you are posing is a situation where no
18 effort has been made. We have said to reduce the impact on
19 health that (a) imposes that and there must be a finding in the
20 concept we are spelling out here that a substantial effort has
21 been made to reduce the impact on public health.

22 Now the addition to that that we are talking about, the
23 Cooper proposal, is not the authority of the court to write a
24 whole new plan, but rather to insist upon such additional interim
25 pressures to reduce the impact on public health as may be suggested

1 What you are saying to me is there is no middle course. Either
2 the court orders full implementation of the deadline or none.
3 I just think there is a middle course that should be opened to
4 the court's discretion. If there is not, then let us write it
5 into the law.

6 Senator Eagleton. I think there should be a middle course.
7 I want to emphasize what Senator Spong has said because I think
8 he is 100 percent right. I know Gary and Hammond, Indiana,
9 fairly well and it is a lead pipe cinch they can't comply. The
10 Governor will go to court to take the money off his back. He
11 is being besieged by the ladies' garden clubs and the environ-
12 mentalists and 40,000 steel workers, most of whom are black, who
13 will be put out of jobs.

14 It will be up to the Federal judge, who is immunized by
15 lifetime tenure, to make the decision. HEW can't make the deci-
16 sion, He talks about politics. That is too much politics for
17 HEW or any living elected or appointed politician.

18 The only out is for a Federal judge. I think it is entirely
19 analogous to desegregation cases. He is the only one who could
20 make an order and make it stick.

21 Senator Muskie. The one thing that is overlooked is this
22 implementation does not take place on the last day of five years
23 and seven months. There are specific industries and sources,
24 and they will vary and they will not all trigger the last month
25 or day. If the timetable has been properly drawn, it will start

1 running after the first day of the timetable. So the implemen-
2 tation goes along and then three years and a half after the
3 time period has started running, it becomes clear that in spite
4 of the things that have already been done, the timetables that
5 have already been met, when the crunch comes, the final result
6 is not going to be good enough.

7 So this is not an either/or situation that the judge faces.
8 He goes into a process that is underway. Then he goes in and
9 we say to him, "You ought to insist on that timetable unless
10 these conditions are met."

11 What we are talking about here in terms of protection of
12 public health are the incremental things that can be done as a
13 stopgap, temporary, interim steps to minimize the impact on
14 public health.

15 Senator Eagleton. Which would include closing half of the
16 blast furnaces in Gary.

17 Senator Muskie. If the situation is that bad and has gone
18 for four years, maybe that is right or may the petition should
19 not be granted at all.

20 Senator Eagleton. In Gary you could put in the most up-to-
21 date equipment, but because of a tremendous concentration of
22 steel mills, Gary is going to have a terrific time complying.
23 I am in favor of the middle ground approach, but I am in favor
24 of going into it with our eyes open.

25 Senator Cooper. What is wrong with a judge taking such

1 as would be necessary to minimize?

2 Senator Spong. I am just going over in my mind what Senator
3 Baker brought up originally. I don't know that there is a mid-
4 dle road as far as the courts are concerned, because they just
5 lead from one problem or question to another. Wherever people
6 can lean on them and let them decide, there is a growing ten-
7 dency in this country to do so.

8 I just think we all ought to know what we are doing when
9 we do this.

10 Senator Muskie. If we did not have a provision for relief
11 in the courts, that is where the matter would end up because that
12 is where the enforcement winds up. The court is going to have
13 to face the whole problem and that is the structure of the
14 process. So what we are talking about is an interim court pro-
15 cedure that gives the court an out, some relief but under condi-
16 tions.

17 It is not conceivable that the court could order more done
18 than would have to ordinarily be done if the deadline were passed.

19 Senator Baker. I think you could do this. I did not think
20 you could for a while, but let me back up for a minute and let me
21 see if I make my feelings in accord with Senator Cooper and Tom.
22 No one doubts we have the authority to establish the jurisdiction
23 of the district court in this field. They have no jurisdiction
24 now.

25 We are creating a brand-new cause of action. It is statutory.

1 We have the statutory authority to create the courts and delin-
2 eate their authority. So that point is at rest.

3 No. 2, we can prescribe a date beyond which suits may not
4 be filed. We can prescribe a date beyond which the court may
5 not keep the suit. The court enters a judgment. We can prescribe
6 the method of appeal and the method of trying if we choose to
7 do those things.

8 Why can't we also provide that they can make interim orders
9 to guarantee for the time of the extension judicially granted
10 that steps be taken to minimize effects and give the Governor
11 the right to accept or reject those conditions and to provide
12 that the court may not extend beyond those requirements?

13 It may not go beyond the jurisdiction specifically granted
14 by that authority.

15 Senator Spong. What is a Governor's remedy if you reject?

16 Senator Baker. He can appeal. It is sort of like the
17 remittitur in a damage suit. He has, say, ten days to either
18 accept or not. If he rejects it, by statute we would provide
19 that he could appeal.

20 Does this encompass the aspects of all of the several sug-
21 gestions?

22 Senator Eagleton. Yes.

23 Senator Muskie. We may not like it when we see it, but I
24 think we are pretty much in agreement really.

25 Senator Baker. I think Senator Cooper is right and we have

1 to be unafraid of spelling it out for the court.

2 Senator Muskie. Let's turn to the bottom of page 19.

3 Senator Baker. May I make one more remark on this section?

4 Subsection (c) in return relates to the Federal installation
5 section. All I want to say is if we leave subsection (c) the
6 way it is, I want to change Section 119 on page 38 to make it
7 clear that the paramount interest of the United States does not
8 mean solely the financial interests of the United States.

9 Mr. Billings. When that language was adopted in a confer-
10 ence with the House on the Water Pollution Bill, it was for just
11 that purpose. If you remember, the old law had consistent with
12 the interests of the United States within then available appro-
13 priations. We knocked it out over here and the House insisted
14 on something that would give a national security copout.

15 The report specifically stated that this is not an appro-
16 priations function. It would give the Executive some leeway.

17 Senator Baker. Senator Proxmire introduced an amendment
18 which I was sorely tempted to vote for when he pointed out the
19 worst polluters are United States Government agencies, and he
20 proposed we cut off funds to these agencies until they comply,
21 which is probably not a good way to approach it, but I do think
22 we should spell out here a more specific and severe test before
23 the Federal Government should get any exemption.

24 I think they should be premiere and first and foremost in
25 pollution abatement. I would suggest we simply strike subsection

1 (c) on page 18 and create no exception including the Federal
2 Government.

3 Tom Jorling points out that is well and good, but I have
4 slapped the wrong fellow. I am presenting an effort to protect
5 the region without the Government requiring them to clean it
6 up.

7 Mr. Jorling. We have tighten up 119. Let's tighten up 119.

8 Mr. Royce. We can substitute the concept of national inter-
9 ests.

10 Senator Baker. I want it spelled out that we want the
11 Federal Government to be the leader in this rather than having
12 the availability of special exceptions and only in cases of clear
13 national interest, such as national defense, can an exception be
14 granted and then on only a very temporary basis and full dis-
15 closure on which the exception was made.

16 Mr. Billings. We have the exemption for one year and notifi-
17 cation of Congress of any extension.

18 Mr. Jorling. Let me suggest a hypothetical on law enforce-
19 ment. The only enforcement mechanism I see against a Federal
20 facility is a citizen's suit. That would make the President make
21 a finding that is in the paramount interest of the United States.
22 The President cannot enforce this. It will come back to the
23 hands of the Congress, but the only trigger on enforcement is the
24 citizen.

25 If a citizen in Tennessee brought an action under this

1 authority, because there is no authority absent a presidential
2 finding that Congress has mandated that they comply. If there
3 is noncompliance, they can bring an action under the citizen's
4 suit provision, which would require the President to make a find-
5 ing or by closing down a Federal facility.

6 The only enforcement mechanism I can see against a Federal
7 agency is from a citizen or from a Governor.

8 Senator Baker. By statute we could authorize a Governor to
9 file a suit to determine whether standards are being met.

10 Senator Muskie. Let's see what we can do with this. Let's
11 go on to page 19. We will leave it in and work on it. The staff
12 will try to work out something. I think it should be in there.

13 On page 19 we have the state standard for restrictive state
14 standard. I think we have discussed that before and we don't
15 need to get into that again.

16 On page 20 we have new source standards and performance. I
17 have one question on this I am afraid I have to raise and that
18 is on page 21 as (b) (1): "The Secretary shall within 60 days
19 after enactment of this section publish a list of categories of
20 resources."

21 There is no standard in here defining the categories of new
22 sources. I think it should be subject to this section of the
23 bill. I am afraid we need some. I don't have any at the moment
24 but I think we should direct the staff to develop some.

25 Mr. Guard. We are all referring to the 19 industries which

1 are set forth in the emission standards.

2 Mr. Billings. We will try to get a definition that more
3 appropriately signifies what those are.

4 Mr. Guard. Do you want to force him to publish the entire
5 list?

6 Mr. Billings. No, that is why from time to time ordered
7 thereafter to allow him the flexibility.

8 Mr. Guard. As I recall, these are industries which are major
9 contributors to the national air pollution.

10 Mr. Billings. To the extent that they are new plants.

11 Mr. Guard. It is unclear as it is.

12 Senator Muskie. If they are polluters, wherever they are
13 located, they should be under control.

14 Mr. Royce. May I raise a question regarding (b) (2), which
15 may require report language, but I think the committee should
16 focus on what is meant by "latest available control technology"
17 with regard to, say, the construction of a generating facility,
18 which requires five or six or seven years of lead time, at what
19 point does that latest available control technology apply, at
20 the time of design or when the company must begin to order hard-
21 ware?

22 Senator Muskie. The provision on page 20 is standards of
23 performance shall become effective upon promulgation.

24 Mr. Billings. It would be the latest available technology
25 at the time of promulgation of the standards.

1 Mr. Jorling. At the time they seek certification.

2 Mr. Royce. And the revisions?

3 Mr. Billings. The revisions only operate to the new plant.

4 Senator Muskie. The certificate of compliance is described
5 on page 21. The procedure would include provisions for precon-
6 struction review of the locations and designs; performance tests;
7 methods to identify and abate violations; and methods to assure
8 that any certified new source shall not prevent implementation
9 of national ambient air quality standards.

10 This is all determined based upon the certification of
11 application.

12 Senator Boggs. You mean latest available technology and
13 so on available at that time and equipment in production, or do
14 you want to wait seven years while you produce some item?

15 Mr. Billings. If I might define it a little bit, Senator
16 Boggs, what NAPA hopes to do in this kind of circumstance --
17 let's assume a power plant achieves a degree of control and this
18 is better than anything else. Based on that degree of control
19 all of the plants that are built subsequent to that promulgation
20 will be required to meet that standard.

21 If somewhere along the line a new process comes along, they
22 will promulgate new standards applying to the new plants, so you
23 are constantly moving your technology ahead. You are basing
24 your standard on what can be done.

25 Mr. Royce. If Con Ed has achieved this and Detroit Edison

1 has already started design but their plant will not be constructed
2 until four or five years after this breakthrough, but they have
3 already designed their plant and maybe ordering hardware, do
4 we require Detroit Edison when they are mid-stream to apply the
5 technology which Con Edison has developed, but which took maybe
6 five or six years to develop?

7 Mr. Billings. If construction has been initiated in terms
8 of this, Detroit Edison would be off the hook. If they just
9 delayed it, the delay in power plant is construction process and
10 not design process. If they are actually physically under con-
11 struction and they have begun work on the side, they would be
12 out from under on the resource performance.

13 It says including preparatory work. It is part of the
14 term "construction."

15 Senator Muskie. Where is the mandated section?

16 Mr. Jorling. It is on the bottom of page 26 and the top
17 of page 27.

18 Mr. Billings. I believe a line has been left out of this.

19 Senator Muskie. That certainly does not exempt a plant that
20 was begun or the construction that was begun ---

21 Mr. Billings. "(2) 'new source' means any stationary
22 source, the construction and modification of which is begun on or
23 after the effective date of any standard of performance applica-
24 ble to such sources;"

25 You can operate a new source, but the new source has to have

1 begun construction after the standards.

2 Senator Muskie. Are there any other questions about the
3 new source section?

4 The next section, then, on page 26, National Emission
5 Standards, selected air pollution agents. I will ask Leon to
6 explain this. This is a concept which we developed since our
7 last meeting.

8 Mr. Billings. Section 114 would provide the Secretary
9 with authority to develop emission standards for certain pollutants
10 which are defined in paragraph (1) as having limited pervasive-
11 ness. These are basically pollutants which exist in the vicinity
12 of a plant, they have an effect on health and welfare, they are
13 not traceable to the general ambient air and in many cases they
14 will be controlled through the application of the particulate
15 control section in other parts of the law.

16 It is fairly open and it covers a lot of pollutants that
17 would otherwise have to come under the air criteria section and
18 not logically so. It requires that the standards relate to
19 stationary sources of major importance by tying it back to the
20 new source performance sources; in other words, selected air
21 pollution agents emitted from major sources of pollution.

22 While it sets forth that the pollutants shall be listed in
23 the Federal Register 180 days after enactment, the Secretary shall
24 publish the emission control requirements from time to time with-
25 out any specific deadline. He would also provide authority for

1 the Secretary to waive the application of this section to this
2 stationary source that he finds achieves the greatest degree of
3 air pollution control technically feasible and that the health
4 of persons is not adversely affected by such waiver.

5 This is to deal with open plants in a metropolitan area
6 where they have achieved a high degree of particulate control.

7 Senator Eagleton. I raise one nit-picking question here.
8 In Section 114(a)(1) the sixth line down says, "Generally
9 reflected to be of limited pervasiveness." It could be alleged
10 that that takes away commerce clause jurisdiction.

11 If "limited" is limited just to the immediate geographic con-
12 fines of a given plant in a given state, how is it in interstate
13 commerce and if it is not in interstate commerce, how is it in this
14 Act?

15 Mr. Jorling. I think there are three constitutional links
16 to it. It does have an adverse effect on health and welfare.
17 You have the welfare provision in the Constitution. The second
18 one is it is referenced back to Section 113's definition of
19 stationary sources, which is the definition we are going to expand
20 and make more clear, but it is the 19 national scope sources of
21 air pollution agencies. That is the second link to commerce.

22 The third one is even though it is limited pervasiveness,
23 we are talking about it as limited to the generally ambient
24 air pervasiveness in the earlier section.

25 We ex-judges, Your Honor, would treat that Constitution with

1 greater sacredness than these other fellows do.

2 Senator Baker. You ought to see how I got my Constitution
3 marked up. We have some changes.

4 Senator Muskie. I don't want to add to any delay here, but
5 on the definition of these substances, is there anything in this
6 definition that suggests the kinds of substances you are talking
7 about as contrasted with the pollutants you are talking about
8 and the other stationary sources and the more general provisions
9 of the bill -- more limited pervasiveness?

10 I take it these substances are regarded as more clearly
11 unfavorable health effects than those in the section we have
12 just been discussing.

13 Mr. Billings. No, not necessarily.

14 Senator Muskie. Why aren't these under the criteria sec-
15 tion?

16 Mr. Billings. The first reason the staff attempted to find
17 a way around this problem was waiting for criteria putting us down
18 to 1975 before these pollutants would be dealt with. In fact,
19 the reason they were included in the criteria was that was the
20 only way the Department could get at them. They predominantly
21 exist in the area of the plant. They are not from a great number
22 of sources scattered throughout a region.

23 They do not permeate the ambient air. Chances are, like
24 arsenic, they fall in the area of the plant, horses eat the grass
25 and die of arsenic poisoning.

1 Senator Muskie. You have not said anything about the area
2 of the plant.

3 Senator Cooper. What would be the timeframe on this?

4 Mr. Jorling. It would be sliding. He would not be required
5 to publish an emission standard for such agents.

6 Senator Cooper. I think you are dealing with small busi-
7 nesses and small operations and they are probably the least
8 able to get the equipment and devices. I think they deserve some
9 time.

10 Some would be fined \$5,000 a day and to say on every occasion
11 it should be considered a violation, knowing it is a violation ---

12 Mr. Billings. This would be major industries. Probably
13 the principal existing source of any of these pollutants are
14 nonferrous smelters. They are relatively huge operations.

15 It says "stationary sources otherwise subject to Section
16 114." It is indicated that there are 19 major sources of indus-
17 trial categories. This would not get into your small manufacturers

18 Senator Cooper. I would want that clear, because with that
19 \$5,000 fine, they would have to close up.

20 Mr. Guard. As I understand, these would be the same 19
21 industries for which we are establishing performance standards
22 for the Secretary for new sources and then for the ordinary
23 sources as well as the new sources, you would control these other
24 15 kinds of agents, which are a very small percentage of the
25 total national pollution, but for which these industries are

1 sources through these national emission standards.

2 We have national emission standards for the new sources
3 under the 19 industries and for old sources for these particular
4 agents.

5 Mr. Jorling. Whenever the Secretary promulgates a standard
6 which he is not required to do in any specific period of time.

7 Mr. Guard. For 19 specific injuries ---

8 Senator Muskie. Here we have 360 days.

9 Mr. Billings. We have a blank on page 27: "(3) Such stand-
10 ards shall become effective on the date specified in such promul-
11 gation, but in no event more than ____ years after such promul-
12 gation."

13 There is no set time when he has to promulgate standards.
14 That is up to him.

15 Senator Muskie. These are not subject to the implementation
16 plans. This is under direct order really of the Secretary. What
17 he does is decide these X number of industries on his own motion
18 should comply to the performance standards. We say the health
19 effect is not more clear or evident or significant than those
20 substances of general pervasiveness?

21 Mr. Billings. Probably the greatest amount of information
22 on health effects of any pollutants associated with the ones
23 that have been around -- arsenic, something is known about. There
24 is a little bit known about boron and some known about pesticides
25 and substances. They don't know which category fluoride would

1 fall in. Fluoride has a direct effect on animals rather than
2 people.

3 Senator Muskie. On this general and limited pervasiveness,
4 do the emissions from a glass plant of a same given size really
5 have a more limited range of pervasiveness than, say, a plant
6 that produces sulphur oxides?

7 Mr. Billings. Only because you have so many fewer sources
8 within any given area.

9 Senator Muskie. Also from a given source the pervasiveness
10 might be the same.

11 Mr. Billings. You are talking about a pollutant which
12 emits from many, many sources whereas with these you might have
13 in a region a number of sources that would not have any.

14 Senator Muskie. So the limitation of pervasiveness has
15 nothing to do with source, but rather with a multiplicity of
16 sources?

17 Mr. Billings. That's right.

18 Senator Muskie. If you were in a town where several
19 chlorine gas plants are, it would be just as pervasive.

20 Mr. Billings. If you are in an area of a smelter, you would
21 be in an area that exceed acceptable limits.

22 Senator Muskie. If he went into the court with the limited
23 pervasiveness concept, how would you prove a chlorine gas plant
24 was less pervasive than a sulphur oxide plant.

25 Mr. Billings. I think the definition requires some work.

1 Senator Eagleton. Couldn't some of them be split off and
2 put in hazardous origin?

3 Mr. Billings. Senator, very likely some of the pollutants
4 under Section 114 in the report will indicate this may, as more
5 information becomes available, move into the hazardous substance.

6 Senator Eagleton. Is this possible: Give the Secretary
7 whatever remains in Section 114, if you don't split off any more
8 of them, give him unilateral authority to act on them in a
9 discretionary way, even pending the issuance of criteria?

10 Mr. Royce. They put them all in 115 with the hazard.

11 Senator Eagleton. If there is an arsenic situation in
12 Zilchville, Ohio, and it is a crisis kind of situation he can
13 act on even though he does not have a big thick criteria book
14 that would take four years to write up.

15 Mr. Billings. The imminent and substantial danger section,
16 Section 303, would take care of that. It takes care of the
17 endangering of the health of people. This goes to the overall
18 health and welfare aspects. Arsenic is in most areas, where it
19 is admitted, is an animal problem.

20 Mr. Jorling. There is another point we should make here,
21 which we can leave in in the definition. A monitoring system of
22 40 units in the Washington metropolitan area picks it up through-
23 out the area. The substances in the middle are only detectable
24 close to the source of emission by monitoring.

25 Mr. Billings. Or examination of plants.

1 Mr. Jorling. They are not detectable by the standard
2 monitoring systems that are available. Therefore, you can't
3 develop a criteria document that says at so many parts per mil-
4 lion for an eight-hour average you have these effects. There is
5 just no way of determining that. They don't fall into the clear
6 category that they have now given us four substances of hazard
7 in air.

8 Arsenic for some peculiar reason is not like it is in
9 water. It is not quite as directly hazardous to the health of
10 persons, but they do have an effect on health and welfare. The
11 only people who know anything about them are the Federal Govern-
12 ment, and they are emitted generally with each other. That is
13 boron, barium and zinc or products from smelters that are and
14 will be, I think, under the definition under 113 emitted from
15 these industries of national scope, give the Secretary the authorit
16 to go in and set standards for these.

17 That was the philosophy. We ran into the problem you had
18 clear categories on the left and right, but there was this whole
19 series of substances of agents which ambient treatment would
20 just not take care of nor would they meet this test of hazardous
21 to the health of persons.

22 Senator Eagleton. If the Secretary, because he looks
23 at the grass or leaves around a plant, finds a lot of arsenic
24 what can he do under 114?

25 Mr. Jorling. Under 114 he would determine which of the 19

1 categories of stationary sources, first of all, emitted arsenic.
2 Then he would establish what it is in that particular process
3 that emits arsenic. If it was an impurity in the process, he
4 could write a standard without a criteria. It is not related to
5 effects on vegetation. It is related to its emission.

6 He could include an add-on device or any other method that
7 he had available. For instance, with boron they have informed
8 us it could be removed from these emissions very simply.

9 Senator Eagleton. This gives him authority to act, if he
10 finds an emission around a certain plant, without going through
11 the laborious time-consuming criteria processing for which cri-
12 teria could not be set for these because they do not float around.

13 Mr. Jorling. He could not build a diffuse model to go around
14 it.

15 Senator Muskie. Let's ask the staff to sharpen this up. We
16 also want to set a deadline. What should be the deadline, no
17 more than three years, two years or one year?

18 Mr. Jorling. Under the existing Act they had projected
19 that they would have, even though they could in a sense have
20 because they were required to under the statute, they would have
21 published criteria for these substances through 1975, so we
22 could use that point of reference as a limit on which all of the
23 commission standards should be published and say four years would
24 be a roughly analogous time to what they would be required to do
25 under existing law.

1 Senator Muskie. We used three years on the other one. Why
2 not use three years here?

3 Mr. Jorling. I am not troubled by three years.

4 Senator Muskie. It is three years after they promulgate
5 them and that will have some time.

6 Mr. Jorling. Did I understand your question properly that
7 should we place a limit on the Secretary to have published or
8 promulgated standards?

9 Senator Muskie. I am addressing myself to the top of page
10 28, "(3) Such standards shall become effective on the date speci-
11 fied from such promulgation, but in no even X years after such
12 promulgation."

13 Mr. Jorling. Fine. The question -- I wondered whether it
14 should be raised -- the Secretary would have complete discretion
15 when and if he wants to establish emission standards that he has
16 published a list for, and the question I am raising is in (c) (1)
17 should there be a limit -- "from time to time shall publish pro-
18 posed standards," et cetera, established within three years or
19 four years or something like that.

20 Senator Muskie. You already have 180 days for that.

21 Mr. Jorling. That is publication of a list.

22 Senator Muskie. It says 180 days after the publication.

23 Mr. Jorling. It was changed because the Secretary felt
24 there were some that he would like to act on relatively soon,
25 but there were others he would prefer to devote his manpower to

1 first under the Act and then get back to it.

2 Senator Muskie. Is it sound to say three years when you
3 are talking about things like arsenic and chlorine gas?

4 Mr. Billings. Three years is a relatively reasonable period
5 of time for establishing and designing a control system.

6 Senator Muskie. What would be on the borderline between
7 "reasonable" and "unreasonable"?

8 Senator Baker. Maybe just a little bit on the unreasonable
9 side.

10 Mr. Jorling. 18 months.

11 Mr. Billings. 24 months. Two years is a pretty tight
12 time schedule.

13 Mr. Jorling. There are some other things that bear here.
14 These people are going to be on notice immediately after date
15 of enactment.

16 Mr. Billings. They are not going to know what to do.

17 Mr. Jorling. 24 months.

18 Mr. Billings. Two years is relatively unreasonable.

19 Senator Muskie. Or reasonably unreasonable.

20 Mr. Billings. It is almost as unreasonable as 24 months.

21 Senator Muskie. Hazardous air pollutants on page 31.

22 Senator Eagleton. On page 27, two lines up from the bottom,
23 "the greatest degree of air pollution control" -- add a word
24 such as "currently." Say a plant was built in 1920. It is
25 technically unclear.

1 Mr. Billings. That is a good suggestion.

2 Senator Eagleton. Put in "currently."

3 Senator Muskie. I think we covered this next one before.

4 Mr. Billings. If he makes a finding that the pollutant does
5 not meet the definition of hazardous in the clinical sense, as
6 set forth in (d), then that pollutant does back into the pre-
7 vious section to be dealt with.

8 Mr. Guard. Mr. Chairman, may I raise a question there? As
9 this is now written, these hazardous substances are also those
10 from stationary sources that we dealt with earlier, the 19 selected
11 areas.

12 Mr. Billings. That is an error on the part of the staff.
13 It should be regardless of source if they kill people.

14 Senator Eagleton. Change that mistake you made, will you,
15 Leon.

16 Senator Muskie. Do you have any lawyers to raise any ques-
17 tion about the judicial review and Federal enforcement?

18 Mr. Guard. Mr. Cooper said he had some reservations about
19 judicial review and citizen's suits and wanted to feel free to
20 raise them later.

21 Senator Baker. I do, too, and I brought the whole thing up.

22 Senator Boggs. Senator Cooper mentioned that he wants to
23 be as sure that there is due process involved. Is that your
24 reservation on it?

25 Senator Baker. I had not thought of it, but I will add it

1 to my list.

2 Senator Muskie. Since these are technical provisions,
3 couldn't we just report those up subject to sharpening them up?

4 On page 38.

5 Mr. Billings. The staff has instructions from Senator
6 Baker to redraft control of pollution from Federal facilities
7 relative to declaration of policy.

8 Senator Baker. It goes beyond that. I want to tinker with
9 Section 119. I want to have a good strong declaration policy
10 and I want to consider other different enforcement procedures.

11 Senator Muskie. Title II is next, Establishment of Stand-
12 ards -- what is new here? We have gone over most of this before.

13 Mr. Billings. It is essentially the same as it has been
14 all along. The two operative provisions in this section are
15 paragraph (b) on page 39, which provides that standards shall be
16 based on the need to protect public health and welfare, imple-
17 mentalional ambient air quality standards without resultant to
18 propulsion systems, to give the agencies standards not necessarily
19 related to determine the engine.

20 On (e)(1) the members instructed the staff to preparé this
21 to require that 1975 model year cars meet clean car standards
22 substantially the same as that which the Administration proposed
23 for 1980 model vehicles.

24 Senator Muskie. That is the one I would like the committee
25 to focus on, page 40, (e)(1). This is the heart of this one for

1 purposes of this discussion:

2 "(e)(1) Beginning with model year 1975 or after January 1,
3 1975, any new light duty motor vehicle or any new light duty motor
4 vehicle engine, as determined by the Secretary, shall be certi-
5 fied to meet emission standards established by the Secretary as
6 necessary to achieve ambient air necessary to protect the public
7 health and welfare. Such standards shall, at the minimum, repre-
8 sent (i) for those air pollution agents for which emission stand-
9 ards were in effect prior to the date of enactment of this Act,
10 a ninety per centum reduction from allowable emissions for 1970
11 model year vehicles or engines, and (ii) for those air pollution
12 agents for which no emission standards were in effect, a ninety
13 per centum reduction from the average of such pollution agents
14 as actually measured from 1970 model year vehicles or engines,
15 based on measurement techniques established by the Secretary."

16 This does not apply to trucks.

17 Senator Baker. It does not apply to trucks or cars made
18 in 1970. If I started making cars next year, this would not
19 apply to me.

20 Mr. Billings. The standard that your vehicle would have to
21 meet would be a standard based on the 1970 model vehicles that
22 existed in 1970.

23 Senator Baker. Are you sure that is what it says as dis-
24 tinguished from what you meant?

25 Mr. Billings. That may be another error.

1 Senator Baker. I don't think it matters much.

2 Mr. Jorling. The test basis they have is 1970 model auto-
3 mobiles. That is what the reduction is from. It is from those
4 automobiles.

5 Senator Muskie. Have you checked this with the agency?

6 Mr. Billings. That lack was provided by the agency, which
7 may be why it is that way.

8 Senator Muskie. But it does not apply to trucks or busses?

9 Mr. Billings. The busses and trucks would be covered by the
10 provisions previous, (b) (1). In the first place, they had just
11 begun to apply standards to trucks and busses. Trucks and busses
12 would be subject to provisions of the section, including the
13 provisions of subsection (d) (1), which has no deadline.

14 But (b) (1) requires the establishment of standards without
15 regard to propulsion systems and basically this means you are
16 going to get standards for trucks and busses which relate to the
17 steam engine or the diesel or the turbine. They are considerably
18 less pollutant than what are available today.

19 Senator Muskie. Do we have any questions about this?

20 Mr. Royce. May I raise an observation or two, Mr. Chairman?

21 I think that the language as presented puts the burden on the
22 oil industry to come up with a fuel that meets whatever Detroit
23 has determined it is going to do. I think the language could
24 be strengthened to assure that the burden is equally on the auto
25 and the oil industries if we look at it in terms of engine fuel

1 systems so that the emission control provisions will bear equally
2 heavily on both industries to come up with the technology neces-
3 sary. The great thrust today within Detroit probably is General
4 Motors with their catalytic system, which they say will be ready
5 for 1972 test models, which require nonleaded gasolines.

6 Senator Baker. Which are these?

7 Mr. Royce. I asked this question of General Motors on
8 Friday and they say lead-free will provide 50,000 miles without
9 maintenance and 50,000 miles after that with minimal maintenance
10 with as much as half a gram of lead will cut the lining of the
11 catalytic muffler down to 10,000 miles and as much as one gram
12 of lead will cut it down to 3,000 or 4,000 miles, and yet they
13 still have not decided what the catalyst will be.

14 Senator Baker. What else?

15 Mr. Royce. They are searching and it is highly competitive
16 in Detroit. My concern is that the language as presented puts
17 Detroit in sort of a favored position vis-a-vis the oil industry.
18 The oil industry, as things are going out, is going to have to
19 respond to whatever the thrust is within Detroit.

20 I think we could, first, by some sort of declaratory policy
21 statement indicate that the burden is equally on both and then
22 perhaps in such a simple thing as insert a new light vehicle
23 engine system, to indicate that we are thinking of emission con-
24 trols within the engine fuel system rather than having Detroit
25 come up with an engine and say, yes, we have this, now you produce

1 the kind of oil that will meet it.

2 Also, I think that provisions allowing the Secretary of HEW to
3 ask the Attorney General for an antitrust waiver so that the oil
4 and auto industries could get together in a fishbowl under com-
5 plete scrutiny with a public record to deal with this problem
6 might break through some of the obstacles that they say they now
7 have in trying to work out the problem and discounting some of
8 what they say they are still very much concerned about trying
9 to get together.

10 They are concerned about the antitrust.

11 Senator Baker. This relates to an item I intend to take up
12 further on page 62, dealing with fuel. I am concerned, one, that
13 we don't know what mix will be required of fuel engine and tech-
14 nology to produce the result we are going to require. I thor-
15 oughly agree we ought to make it clear to the oil industry and the
16 automobile industry that we expect them to work together and not
17 try to pass the buck to the other fellow.

18 Also I don't think we should stress the type of engine or
19 composition of fuel that they use, but rather specify the result
20 that flows from that combination. We can talk about that more
21 when we come to the fuel section. That is by way of extension
22 of Mr. Royce's remarks.

23 Mr. Billings. The intention is to avoid the type of engine
24 but to approach the type of result. It is somewhat difficult.
25 Unless you specify the kind of engine you can't use, i.e., the

1 ICE, then you have to have to have some mechanism to determine
2 the best amount of the administration so that these methods of
3 control will result. That may not be the result of one another's
4 programs, but that would be the result for the automobile.

5 Senator Baker. I would like to see it spelled out that
6 we are after result and not the specification.

7 Mr. Billings. Which suggests a need for an overall declara-
8 tion of policy in this.

9 Senator Baker. Subparagraph (2) on page 41 poses another
10 problem, Mr. Chairman, which I think is purely of a drafting
11 nature. It reads: "(2) In the event a new power source or
12 propulsion system is submitted for certification pursuant to
13 this Act, the Secretary shall determine, prior to certification,
14 that such source shall not cause or contribute to a violation
15 of ambient air quality standards" -- which is fine in my view,
16 and then it goes on to say -- "or otherwise adversely affect
17 the quality of the environment." This is a catchall which is
18 almost impossible of performance.

19 Mr. Billings. The purpose of this language was the point
20 Dick made at a preceding executive session that an electric
21 vehicle could be introduced which would meet all of the tests
22 of this Act of this title and still, because of the amount of
23 electricity and consumption, the amount of increase in the
24 electricity consumption could have a very deleterious effect on
25 overall quality not related to the vehicle itself.

1 I agree it is catchall language, but that is the purpose
2 of it.

3 Senator Baker. I understand the reason and I disagree with
4 it. You are dealing with two problems, one of precaution and
5 one of stationary power sources. They are related and they do
6 violence to the environment, but we are going to treat them dif-
7 ferently in this bill and we will probably treat differently with
8 them in years to come.

9 That borders on what I just said I don't want us to do and
10 that is specific to what it means. Item 2 is a good example,
11 I think it does not meet the objections to the drafting language
12 that I tried to state because the language is much broader if
13 adversely affects the quality of the environment, it is not to
14 be certificated under this section.

15 I really believe that a literal or even a general and loose
16 interpretation of this section would permit you to have engine
17 development. Virtually nothing is free except the election of
18 Republicans to the Senate.

19 Mr. Billings. That will certainly solve some staff prob-
20 lems.

21 Mr. Jorling. I think we can fool with the language beginning
22 with the "or otherwise" and add some prefatory language and
23 consider relative and subsidiary effects on the environment,
24 making him cognizant of the fact that he might be robbing Peter
25 to pay Paul.

1 Senator Baker. Would that be implicit in "quality ambient"?

2 Mr. Billings. I think you are right. If an electric car
3 was going to cause that much pollution, it would contribute to
4 the violence of ambient air temperature. We may have outdone
5 ourselves there.

6 Senator Baker. It was all for a good and worthy cause and
7 you are to be commended.

8 Senator Muskie. I am not sure where we are.

9 Senator Baker. Page 41.

10 Senator Muskie. Have we agreed to anything in establishing
11 standards? I don't know about exempting them from the antitrust
12 section. That is a policy question.

13 Mr. Royce. Counsel and I have been subjected to a lot of
14 discussions with industry people outside. This is not an indus-
15 try proposal. It grows out of some degree of sensitivity to
16 the holdup that is taking place within the industry, within the
17 oil and auto industries by their failure to be able to share
18 technology free of the antitrust.

19 I realize that this could have far-reaching implications
20 and it has certain political sensitivity, but we felt we ought
21 to bring it to the attention of the committee.

22 Mr. Meyer. With respect to the waiver line, Tom Jorling
23 and I had discussions with two attorneys from the Justice Depart-
24 ment Antitrust Division. Under present Justice Department opera-
25 tions, private people can go to the Attorney General to request

1 a waiver, which he will grant under certain circumstances.

2 The purpose here is to have the Secretary of HEW make the
3 determination that it is in the public interest from a pollution
4 point of view to have the Attorney General do this rather than
5 having private parties do it, because he has the distinct reluc-
6 tance to play this game. But I think with the public record and
7 the waiver only extending as far as matters on the record are
8 concerned, I think he has done a pretty good job of cutting out
9 any chances of using it as a blind control for trade.

10 Senator Muskie. I think you had better check that with
11 Senator Hart's subcommittee. This is a matter really within the
12 jurisdiction of the Judiciary Committee.

13 Let's go on. Are we basically in accord with this concept
14 of Section 202 of the bill?

15 Prohibited acts is covered.

16 Injunctions, page 45, is existing law.

17 Penalty.

18 Mr. Billings. It is basically existing law except the
19 penalty has been increased.

20 The certification here is the procedure for pre-evaluation
21 of the vessel, vehicle, or aircraft, or new vessel, vehicle,
22 or aircraft engine. It establishes the test procedures.

23 HU fols

24

25

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Senator Muskie. Is that production line testing?

flg geo k 2

Mr. Billings. No, production line testing comes in

last take 3

on page 51, compliance testing.

4

Senator Muskie. What about these other five pages?

5

Mr. Billings. These are the provisions for certification prior to manufacture.

7

This is the pre-production certification. It goes to 51 in the new bill.

9

Senator Muskie. Does that also include the warranty?

10

Mr. Billings. 307 is production line testing and warranty and requirement that the vehicle meet the standard for 100,000 miles or 10 years.

12

13

Senator Muskie. Is that a reasonable time?

14

Mr. Billings. That is the life of the vehicle.

15

Mr. Jorling. By their regulation as well.

16

Senator Muskie. Is it feasible?

17

Mr. Billings. The industry would argue no, it is not feasible. Actually, the average would be probably less than 50 because you get the 10 percent dropout each year. Ten million cars to start with, wouldn't go off in 10 years, they go off about a million a year.

21

22

On page 54 you have recall for vehicles which fail to continue to comply.

23

24

55 will have to be cross-referenced to the Highway Safety Bill.

25

1 Page 57, section 210 provides that the Secretary can
2 let the States set more restrictive standards for new cars
3 with such a requirement as necessary to implement national
4 ambient air quality standards but it preserves the
5 California waiver. Otherwise, it is identical to the existing
6 law.

7 Senator Muskie. It does not preempt?

8 Mr. Billings. It preempts but it allows the Secretary
9 to let a State out from under.

10 Senator Muskie. Any State?

11 Mr. Billings. Any State.

12 The used vehicle section requires language that sets forth
13 standards of performance.

14 In other respects, the key policy question, Mr. Chairman,
15 appears on page 59 in the new print which would require a
16 dealer engaged in the sale or resale of vehicles to equip
17 vehicles resold with devices certified by the Secretary.

18 Senator Muskie. That is a key question here. Let's focus
19 on that.

20 Mr. Billings. It is at the top of page 59 in the new
21 print.

22 Senator Muskie. This is to require the Secretary to set
23 standards for devices on used cars and certify them and require
24 that such devices be installed on used cars when they are re-
25 sold. That is the technique.

1 Senator Boggs. Before they may be resold.

2 Senator Muskie. What are they going to cost?

3 Mr. Royce. General Motors has one for \$9.95, which requires
4 probably \$15 to \$20 to install and probably a \$40 to \$50
5 tune-up to make it effective, and that requires for 100 million
6 cars, probably four or five times as many mechanics as there
7 are in the United States. General Motors put a massive effort
8 in Phoenix in a trial run, spent \$60,000 in promotion and
9 sold 601 of them. The question arises as to what stimulus
10 is there for anyone to go into the business, but I think,
11 Mr. Chairman, the real question is not that it would require
12 that they couldn't produce a device but there are just not
13 enough qualified service station mechanics to tune up a car
14 to the extent this would require. What we are trying to do
15 in the rest of the new vehicle provisions is to stimulate
16 them to develop an emission control system which is maintenance-
17 free and there is no maintenance-free add-on device.

18 Mr. Billings. The California law requires prior to
19 imposition of used vehicle control, three devices which sell
20 for \$65 or less. To this day, they have not been able to
21 implement that law because they have not gotten three add-
22 on devices certified which could be made available to
23 the consumer for \$65. The chances are even with this provision
24 you would be imposing a cost, even with the Federal reserve
25 effort and Federal stimulus to bring other people into the field.

1 you would be talking about something around \$100 per car. If
2 it took two to three years to develop it, you would be talking
3 about controlling cars, 50 percent of which theoretically
4 were operating under the controls required by the 1968 law so
5 you would have achieved a reduction on the order of 80 percent
6 if the vehicles were operated properly, which it is not; it is
7 operating at about a 50 percent level.

8 The bill has in it, which was passed over quickly, the
9 authority to set standards requiring controls on commercial
10 vehicles, which would get at fleet vehicles. It would seem that
11 this other than a provision to stimulate the development of
12 devices that could be certified and then have those devices
13 available to impose as means of a control, anything more than
14 that would be an undue burden.

15 Senator Muskie. There are at least 9 million used cars
16 sold a year since there are that many new cars sold.

17 Mr. Billings. How many are junked?

18 Mr. Royce. I think about 7 million a year.

19 There are roughly eight or nine million used cars a year
20 that are sold.

21 Senator Muskie. The devices are not being produced in
22 that quantity. How long would it take to get up to that
23 quantity?

24 Mr. Billings. It would probably take two to three years
25 as a minimum to develop a certified device.

1 Senator Muskie. This used car monster pops up every place
2 you turn.

3 Mr. Royce. This GM device is only about 37 percent
4 effective when it works.

5 Senator Eagleton. It is like Drew Pearson's predictions,
6 37 percent when it works some of the time.

7 Mr. Billings. There is a justification that can be made
8 for certification of devices to get some of the racketeers
9 off the market. There are an awful lot of people running
10 around with devices, most of which are substantially fraudulent,
11 from everything we are told. If you had a device certification
12 provision and some emphasis on the development of devices
13 then States that had peculiarly tough air pollution problems
14 could require this. The staff would recommend that as
15 opposed to having a Federal mandate to all used cars sold.

16 Senator Muskie. What kind of incentive can you provide
17 for their development?

18 Senator Baker. I think there may be a capacity for the
19 after market, these accessory dealers to produce such mufflers
20 now. I have had two delegations come by to see me, representatives
21 of companies who say they can produce them right now fully
22 developed.

23 Senator Muskie. Let's ask the staff to develop a
24 section here which is designed to set standards and stimulate
25 the development of catalytic mufflers or other devices.

1 Mr. Billings. Without a statutory mandate?

2 Senator Muskie. We might want to take up the question
3 of statutory mandate later.

4 Senator Baker. We might require any after fitting which
5 would probably reduce the amount of pollutants from second-
6 hand automobiles or substantially simply by requiring the used
7 car dealer to tune it to optimum performance before he sells
8 it.

9 Senator Muskie. Then you have an inspection problem
10 and you have the mechanic problem.

11 If used cars are all kept tuned, it would sure reduce
12 the problem.

13 I don't know how you would police that one. You could
14 make it part of the implementation plan.

15 Senator Baker. We made them put wrench devices on cars
16 so they could sell them in interstate commerce.

17 Senator Muskie. Adding a device is easier to check.

18 Senator Baker. I guess it is, but the best you could do
19 is spotcheck.

20 Senator Muskie. We will ask the staff to fool around
21 with that idea.

22 The next item on here is regulation fuel additives
23 and there is new text here.

24 What does this designate mean?

25 Mr. Billings. It is designated for this purpose.

1 Senator Muskie. I don't think the word "designate"
2 quite conveys a clear idea.

3 What does this do?

4 Mr. Jorling. Maybe it would be helpful to start with
5 point 2 in paragraph 2.

6 Mr. Billings. The purpose of the provision is to give
7 the Secretary authority to determine what is in fuels, what
8 the purpose of those components or properties are of the fuels,
9 what the components and properties are, and to regulate fuels
10 as regards, (1), protection of public health and welfare; or,
11 (2), the relationship between fuels and in compliance with
12 section 202 emission standards.

13 Section (a) merely sets forth a considerable backdoor
14 way of saying the manufacturer can't deliver fuel unless he
15 does certain things in interstate commerce, providing the
16 information, registered the additive in conformity with any
17 standards that may be subsequently drafted.

18 Senator Baker. He cannot sell it unless he meets the
19 formula prescribed by the Secretary which he can do under
20 this Act. That is what I object to. I think you ought to be
21 able to prescribe what combustible fuel elements are but not
22 the components.

23 Senator Boggs. Prescribe the results.

24 Senator Baker. The fuel companies probably know more
25 about reducing pollution than the Secretary. Let the Secretary

1 have the initiative in telling them what the composition of
2 the fuel should be.

3 Senator Muskie. The Secretary may on the basis of
4 information obtained under subsection (c) of this Act establish
5 standards which by regulation respecting the composition or
6 the chemical or physical properties of any fuel or fuel
7 additive to see that such fuel or components including additives
8 would not cause or contribute to emissions which would endanger
9 the public health or welfare or impair the emission control
10 performance of any vehicle or vehicle engine. You can do
11 that with respect to any gasoline.

12 Senator Baker. I think that is close to being all right,
13 Mr. Chairman, because, in effect, you are saying you could
14 require the gas company not to make a gasoline calculated to
15 put unsatisfactory pollutants in the air.

16 Senator Muskie. Any gasoline that is produced without
17 leaded gas is going to produce carbon monoxide emissions
18 that will impair the public health and welfare, so he is not
19 going to be able to certify any fuel, is he?

20 Senator Baker. I agree.

21 Mr. Royce. That is right, especially with the language
22 "contribute to emissions which would endanger."

23 Senator Boggs. He would have to ban the sale of all
24 gasoline in the country.

25 Mr. Billings. If anything, he would not be able to act or

1 he would not be able to set the standards.

2 Senator Baker. I would like to see, Mr. Chairman, at
3 the next convenient opportunity to have the staff supply us
4 with draft language which would simply give the Secretary
5 the right to prohibit or regulate the sale of fuels if ordinary
6 combustion byproducts or those fuels contain certain prohibited
7 things or had certain prohibited results such as fouling
8 emission control devices rather than telling them and
9 regulating the unburned properties of the fuel.

10 Mr. Billings. You are suggesting the limits the
11 Secretary can place on the fuel?

12 Senator Baker. No, to bottom his authority on the product
13 of combustion rather than on the composition of the unburned
14 fuels. It is too late and too difficult to put the language
15 together now, but I would like to see the Secretary have full
16 authority to prevent the sale of gasoline which contained harmful
17 combustion byproducts or the sale of gasoline which would
18 prevent the efficient operation of the emission control devices.

19 Beyond that, I really don't think we ought to tell them
20 what they can put in their gas or can't.

21 Mr. Royce. There might be a gasoline that would be
22 detrimental to one control device and not another.

23 Senator Baker. That is true, but I don't know how you
24 would handle that. It may be that you will have to establish
25 some sort of series of norms, catalytic mufflers with boron,

1 thermal cracking mufflers and the usual range and decide that
2 you can sell it in one configuration and you can't in another.

3 Mr. Jorling. I think you are inescapably going to find
4 he will have to establish standards with respect to fuels
5 and the emission standards and where the fuels are going to
6 be used.

7 Mr. Royce. We have to look at it in terms of systems.

8 Mr. Jorling. Not only that, but what I am suggesting is
9 he has to be able to say this fuel can be sold if it is sold
10 only to go into 1980 vehicles but he can't say you can only
11 sell that fuel because that fuel may not run a vehicle that
12 was made in 1965.

13 Mr. Meyer. In the normal market operation, the new low
14 lead and no lead fuel are being produced in response to a
15 1971 octane vehicle, so there is a give and take between
16 the two of them. The fuel, Esso fuel is being produced right
17 now with the big plus. It won't work in automobiles that can
18 only function on regular fuel. It is terribly inefficient.
19 The point is some place along the line he has to create this
20 relationship.

21 Mr. Jorling. I am just saying the way this is written,
22 if he made a finding that it would poison a catalytic muffler,
23 he could not allow its sale.

24 Mr. Meyer. The problem is, though, in terms of the overall
25 national cost of controlling emissions, he might have to say,

1 well, this particular type of catalytic muffler can't be
2 used either because the cost is not justified in terms of
3 the control to be achieved. I think this is why in putting the
4 two of them together it becomes important. Conceivably they
5 could come up with a muffler that requires a fuel that costs
6 70 cents a gallon to buy retail, which is not going to help
7 us out either.

8 Senator Muskie. This section, obviously, requires some
9 work and we are not going to do it tonight. I suggest
10 that we finish the rest of the bill and we just refer that
11 problem to the full committee and the staff can work on it
12 in the meantime. We can leave it out and put it in later,
13 and the same with the used car problem.

14 Senator Baker. I think Leon is closest to language.

15 Mr. Billings. What we are saying --

16 Senator Baker. It is striking out the reference to physical
17 or chemical properties, using the language you already have,
18 striking out two lines and add the prohibition language here.

19 Mr. Billings. I am concerned that somehow you have to have
20 a handle if you are going to go to the question of the danger
21 of public health and welfare to the additives in the fuel.
22 You have to have knowledge. Would your suggestion in any way
23 affect the information-gathering authority of the Secretary
24 to determine whether or not those physical or chemical properties
25 might be causing or contributing to the emission?

1 Senator Baker. I don't mind requiring the companies to
2 disclose in secrecy their additives so that the Secretary
3 could be on the lookout and so you are not sneaking up on
4 his blind side. I would not want to say gasoline of a
5 certain composition. If boron or nickel are used instead of
6 lead and the Secretary knows that in advance so his technicians
7 do an especially close study of the combustion by-products to
8 see if there is any residue that might be harmful, then I think
9 everybody is kosher but I do want not the Secretary to say
10 you cannot use more than six grams of boron crude stock or
11 something like that.

12 Mr. Billings. Unless he knows at that level health and
13 welfare is in danger.

14 Senator Baker. No, I want him to be able to say if
15 the combustion by-products have more than six grams per mile
16 or whatever unit you would use to measure, that you can't
17 use it, not that you can't use the additive, but you can't
18 sell the gasoline, which is a fairly persuasive reason.

19 Mr. Billings. In this, would you require more in the
20 future tense, the industry to notify the Secretary of intent
21 to use any new substance so he could review in advance and
22 make that determination?

23 Senator Baker. That does not bother me a bit. I have no
24 I want them to know in secrecy so there can't be any complaint
25 about trade secrets. They will scream about that, but that

1 is all right. I don't want them to be able to say this can
2 or cannot use the additive. He can tell them they can or
3 cannot sell the gasoline if the by-products are such and such
4 or have such and such an effect.

5 Senator Boggs. This provision here for the lead on
6 Section 2, this provision for emission control performance over
7 the life of the vehicle, the most economical method is important,
8 too.

9 Senator Muskie. Do you see any problem on development of
10 low emission vehicles?

11 Mr. Billings. The committee will probably receive an
12 amendment on the floor from Senator Magnuson attaching his
13 procurement legislation which the House has indicated they
14 would take part of this bill to expedite it.

15 Senator Baker. Has anyone seen the natural gas cars
16 running around town? I was told by one of the drivers parked
17 around here that they run much better than cars with gasoline.

18 Senator Muskie, I like this definition of any contrivance
19 herein or now ever after invented.

20 Mr. Billings. We sure have the SST if it is hereinafter.

21 Senator Muskie. Is there any question about citizens
22 suits or have we worked that out all right?

23 Senator Baker. Senator Cooper asked some questions,
24 Mr. Chairman, and I would urge as we go into this we consider
25 the possibility of a fairly severe time limitation on citizens

1 groups, not for the time of filing but for the time of
2 disposition. What I am driving at is this: As Senator Eagleton
3 pointed out, a citizen's suit in a pollution case can embrace
4 such a wide range of relevant testimony that if you don't lay
5 down some guidelines for the court and the time in which they
6 have to do it, you could be trying a lawsuit for five years,
7 and that is the only objective I am trying to meet.

8 Mr. Billings. The staff sat down after it fiddled with
9 this for some time with Pete LeRoux, the legislative counsel,
10 in which there was some major revisions in the first relative
11 to the courts enforcing or requiring the enforcement of schedules
12 and so on.

13 Then the staff included this language which appears at
14 the bottom of page 71 that "The court, in issuing any order
15 in any action brought pursuant to subsection (a) of this
16 section may award costs of litigation, including reasonable
17 attorney and expert witness fees whenever the court determines
18 such action is in the public interest."

19 The thrust of this is the court determines if the suit
20 is harassing he can award fees to the defendant; if he determines
21 it is in the public interest from an environmental point of
22 view, and he can award fees to the plaintiff.

23 Senator Baker. There aren't any winners except the
24 lawyers?

25 Senator Eagleton. What about the fee?

1 Mr. Billings. Under this language, the defendant has
2 to pay.

3 Senator Eagleton. How does he collect? Does the plaintiff
4 have to file a bond?

5 Senator Baker. He would have to file a regular
6 prosecution bond under the Federal Rules of Civil Procedure
7 unless he is indigent.

8 Senator Eagleton. I have a couple of questions left on
9 it.

10 Senator Muskie. Go ahead, Tom.

11 Senator Eagleton. Halfway down on page 71 it says: "Prior
12 to instituting any such suits such person or persons shall
13 afford the Secretary, his representative or his agency, at
14 least 15 days from the receipt of such notice to institute
15 enforcement proceedings."

16 I take it an agency such as the Missouri Air Pollution
17 Commission institutes some kind of proceeding in 15 days, a
18 class action suit cannot lie or does not lie.

19 Mr. Jorling. After 15 days the person who desires to
20 institute the suit would have the opportunity to make a
21 judgment whether he was satisfied with the Missouri Commission's
22 performance and if he was not he would amend his petition to
23 include partydefendant. He is not barred from prosecuting
24 if the agency undertakes to initiate abatement. He is not
25 barred from it. The court would have that in front of him.

1 Senator Muskie. Is 14 days a long enough period?

2 Senator Eagleton. I hear what you are saying, and that is
3 on another subject.

4 Senator Spong. The purpose of the language -- and I have
5 not gone into it very thoroughly -- was to be sure that
6 the State agency had an opportunity to move. That is what we
7 are really trying to do.

8 Senator Eagleton. What if the agency does move?

9 Senator Spong. If the agency does move, it does not keep
10 them from going into court.

11 Senator Muskie. As I recall it, and we discussed this in
12 some length, the theory was most plaintiffs would be satisfied
13 if they knew that the State agency was moving in so that they
14 ought to try to trigger that kind of action. It is not necessarily
15 to foreclose the proceeding of the action.

16 Senator Baker. If you can get the State to do it for you,
17 you don't run the jeopardy of being charged fees and costs.
18 In State courts in Tennessee the people try to get the attorney
19 general to file proceedings so when there is risk in the
20 removal of directors --

21 Mr. Billings. We raised this question specifically with
22 the Legislative Counsel and he felt if the agency filed a
23 proceeding but didn't go any further that the court would
24 entertain a suit once the 15 day period has elapsed.

25 Senator Eagleton. I wanted no if's, and's, and but's. They

1 have 15 days but on day 16 regardless of what they filed, how
2 sincere they are in filing it, how determined they are in filing
3 it, he can go ahead and file his if he just feels he must
4 or should.

5 Senator Spong. I am inclined to think that 15 days is
6 not long enough.

7 Senator Muskie. I think it should be 30.

8 Senator Spong. We are also trying to get at political
9 suits, too, where they were really trying to embarrass the
10 agency or the government or somebody else.

11 Mr. Jorling. In a further effort to bring to the court's
12 attention what the Administration's view of the situation is,
13 even if the Federal Government or the State government does not
14 act, we have the last sentence to this subsection, that the
15 Secretary even if not named a party defendant by the person
16 bringing the suit, he is required to intervene.

17 Senator Eagleton. Why is it "shall" rather than "May"?

18 Mr. Jorling. We wanted the Secretary to state his
19 view which would be either it is a frivolous suit or it is
20 one of such tangential value that we are not going to devote
21 public manpower to it or we just don't think there is a
22 violation.

23 Senator Eagleton. Don't the courts of law determine
24 the frivolousness of suits? That is a judicial determination.
25 The Secretary of HEW does not determine frivolousness.

1 Senator Baker. He determines whether he is going to
2 devote his time and the time of his staff to the prosecution
3 of that lawsuit.

4 Senator Eagleton. If HEW takes a look at the suit and they
5 feel it is something in the public interest they intervene.
6 If they think it is a sort of a nickel and dime suit --

7 Mr. Jorling. If it is a nickel and dime suit, this would
8 require them to come to court and tell them.

9 Senator Eagleton. The judge can determine that on the
10 record.

11 Mr. Meyer. They may be possessed of information which
12 indicates that this is not so.

13 Senator Eagleton. If you want him in every damn suit
14 that is filed --

15 Senator Muskie. It seems to me "may" is a better word.

16 Senator Boggs. Tom is saying the judge has a right to make
17 up his own mind based upon the facts.

18 Senator Eagleton. The Secretary does not have to say
19 it is frivolous.

20 Senator Muskie. It would be a damned burdensome require-
21 ment.

22 Senator Baker. You can make it statutorily possible to
23 make the Secretary an involuntary party.

24 Mr. Jorling. That is what we were trying to do.

25 Senator Muskie. What is involved here is an order of the

1 Secretary.

2 Mr. Billings. Not in all cases.

3 Senator Muskie. Under this provision, it is.

4 Mr. Billings. Under one part of it you have the violation
5 of a plan.

6 Senator Muskie. What does "any such action" mean?

7 Mr. Billings. Clause A is operating without a certificate
8 or operating without a performance standard.

9 Section 14(e)(1) is the enforcement provision of the
10 selected source.

11 Section 15 is hazard omission.

12 Senator Eagleton. Mr. Chairman, would you accept this
13 rough change in the language I was quibbling about. I was not
14 happy with the language. It would read in essence: "No such
15 suit shall be filed until such person or persons shall afford
16 the Secretary or his representative or such agency at least
17 30 days from the receipt of such notice to institute. . ."

18 I know I am probably just nitpicking.

19 Senator Muskie. That is clearer.

20 On the question of intervening, why don't we just change
21 the "shall" to "may".

22 Senator Spong. I prefer "may" to "shall".

23 Mr. Meyer. In the vast majority of cases, the defendant
24 will probably drag the Secretary in anyhow.

25 Senator Baker. What about the 72 hours there? We got all

1 upset about the 15 days.

2 Mr. Billings. That is the amount of notice required.

3 Except for the hazard question, there shouldn't be any
4 notice at all. The others should have more. Hazardous should
5 not have any delay. There you are talking about a direct
6 responsive relationship with people.

7 Senator Muskie. I am afraid I have no suggestion. This is
8 a citizen's suit. What is wrong with the 30-day provision
9 applying to this sort of thing? If something is of a
10 hazardous nature, you are going to rely on the enforcement
11 agencies and their responsibilities, not the citizens. You are
12 dealing with these timeframes that the only way you have to
13 enforce these is a citizen's suit. Why should not the 30 days
14 apply to this as well?

15 Mr. Billings. The only reason being that a polluter
16 can operate on and off in violation of the emission requirement
17 or his standard of performance. In other words, through the
18 way he operates his facility --

19 Senator Muskie. I understand, but the anonymous citizens
20 are not your enforcement arm; it is the agency. If there is
21 a hazardous situation, you are not depending upon some anonymous
22 citizen to come forward with the hazard.

23 Mr. Billings. I was discussing whether or not if you have
24 an emission requirement which is a rather objective thing
25 and it is being violated, you give 30 days at the point at which

1 the Secretary may check, he will find no violation, goes away
2 and the next day the guy is operating in bad practice again.

3 Mr. Royce. How would that be impaired by 72 hours?

4 Mr. Billings. It doesn't. I am not particularly hung up
5 on that. I am hung up on the latter part where you have a
6 person operating in violation of an order or certification,
7 then he should not have any delay.

8 Senator Muskie. He is not going to get away with it
9 indefinitely if a concerned citizen goes to an enforcement
10 agency. They can detect that.

11 Mr. Billings. I see no problem with that as long as you
12 keep the latter part where you have these people who are
13 violating an order that is issued.

14 There is no reason they should have any delay so we can
15 move these up under the 30 day period.

16 Senator Muskie. Federal procurement. I think this pretty
17 well reflects what we agreed on last time. Is there any
18 question about it?

19 Senator Boggs. Harold Brayman raised a question. This is
20 the first section(a)? Are there any questions on that?

21 Mr. Brayman. There was some thought of dropping section
22 (a) which was planning to issue an executive order. I think
23 there was some feeling and there still may be a little
24 question of overkill since we have so many other procedures.

25 Senator Muskie. We are going to have an amendment offered

1 on the floor on this subject, sure as hell.

2 Mr. Billings. Sections (c), (d) and (e) go to the
3 question of the executive order. Section (a) and (d) go
4 to the question of doing business with violators of standards.

5 Senator Muskie. This relates to the use of facilities
6 which are themselves under the subject of the court order.

7 Mr. Billings. That is right, and we have cut down the
8 three years to one year.

9 Mr. Royce. This has been tailored to meet most of
10 the objections that were raised the last time.

11 Senator Muskie. Has employee protection been worked out?
12 I gather that has been worked out to meet our questions of
13 last time.

14 Mr. Billings. Noise pollution is next. There are a couple
15 of minor revisions. There was an attempt on the part of the
16 staff on the kind of thing that occurred on the military
17 procurement bill the other day which required as part of the
18 laws that come out of this committee that that detailed
19 statement prepared as a result of the Environmental Policy Act
20 be reviewed by the Secretary and if the Secretary determines
21 that the statement is unsatisfactory from the standpoint of his
22 requirements, then the matter shall be referred to the Council
23 on Environmental Policy for determination and recommendation
24 of the President.

25 As it stands, it would be applicable to both noise and air

1 pollution.

2 Senator Spong. Mr. Chairman, I understand the staff is
3 going to work on registration and regulations and fuel
4 additives.

5 Senator Muskie. Let me use the section by section analysis
6 and go over the subjects that we will report to the full
7 Committee as having been acted upon. We don't have the language
8 but concepts. If you have it, we will go through it together
9 and I won't have to read it.

10 Section 104, Section 105, Section 106, Section 107,
11 Section 108, Section 109 which are the criteria documents;
12 Section 110, national ambient air quality standards; Section 111,
13 the implementation plans; Section 112, permitting States to adopt
14 stricter standards; Section 113, a new source performance
15 standard; Section 114 national emission standards for
16 selected pollutants. That will take some language changes to
17 refine the definition, but the concept has been adopted.

18 Section 115 hazard and subsequent emissions; sections
19 115 and 116 are going to be revised in the full Committee, so
20 we can say those have been approved in principle but will be
21 refined in full Committee.

22 Section 120, and then Title II, moving sources,
23 Section 202, and that is to be refined but we have
24 adopted it in principle; Section 203, Section 204, Section 205,
25 Section 206, Section 207, Section 208. We did approve the

1 grant in aid system for inspection.

2 Senator Boggs. And tie it in with the highway thing?

3 Senator Muskie. Yes.

4 Section 209, Section 210, Section 211 is not being
5 reported, that is out.

6 Mr. Billings. With instructions to the draftsmen.

7 Senator Muskie. The same with fuel additives. Both of
8 those are with instructions.

9 Section 213, Section 214, Section 303, Section 304,
10 Section 305, Section 306, Section 307, We have not gone over
11 the authorization figures, but those are out to be refined.
12 Title IV, section 403.

13 Are there any other qualifications you think we should
14 make to the press?

15 Mr. Billings. The definition of the word "aircraft".

16 Senator Boggs. On page 1, are we still working on language
17 here under Section 111?

18 Mr. Billings. We will be refining the language as per
19 direction.

20 Senator Muskie. That is the court relief of deadline
21 provision. That really had the best going over of any provision.

22 Mr. Billings. Section 105 will be refined to meet Senator
23 Eagleton's point about the inadequate State programs.

24 Senator Muskie. There is a lot of refinement in here.

25 Senator Boggs. Are we going to get a subcommittee draft

1 and circulate it?

2 Senator Muskie. The things we have not agreed on such as
3 used vehicles and fuel additives. Don't include those in
4 the committee print. Those will be refined separately because
5 we have not agreed on them.

6 The judicial review and Federal enforcement, include those
7 in the committee print.

8 It is just a question of refining. The authorizations
9 you can put in as they are subject to refinement.

10 Mr. Billings. We would hope the staff through contact
11 with the members can work out this court thing.

12 Senator Muskie. Try to work out all of the language
13 requirements so we can have a clean print.

14 Senator Boggs. A clean print to go to the full Committee,
15 but the members would have it before.

16 Senator Muskie. We would have it well in advance and
17 I would like to urge that we are all pretty familiar with this
18 now. If you go through it clearly in advance so that we can
19 hit the questions you have so we wouldn't have to go through
20 the whole thing again.

21 Senator Eagleton. In the full Committee or Subcommittee?

22 Senator Muskie. In the full Committee. I am going to
23 ask if we are ready to report this to the full Committee, and
24 outline what we have done and take it up to the full Committee.
25 If when we get there everyone has clearly in mind the questions

1 he wants to raise -- I don't care how many you have -- so
2 we can go through them, 1, 2, 3, take them up and resolve
3 them -- I think we can finish the bill in one day with the
4 advance staff work and the advance reading of the bill by the
5 members.

6 We know what the tough policy decisions are, and there
7 are some tough ones, and we are going to face some tough
8 amendments on the floor, a lot of them, but I think we have
9 a pretty good bill here.

10 In addition, we ought to send that bill to the Administra-
11 tion and ask them to give us any questions they have so we
12 will know what we are faced with in the way of objection and
13 criticism.

14 Mr. Jorling. Plus authorization.

15 Senator Muskie. That is right, in addition to the
16 authorization.

17 Mr. Royce. The staff probably cannot have the print
18 for distribution before Tuesday morning.

19 Mr. Billings. God willing, we can have it Tuesday morning.

20 Mr. Royce. That means we could not possibly get a
21 productive meeting before next Thursday. That is two days
22 before recess.

23 Senator Boggs. The recess is the following Wednesday.

24 Senator Muskie. Next Thursday would be a good day to
25 shoot for if we can.

1 Thank you very much for your patience. It has been
2 a long session.

3 (Whereupon, at 7:15 p.m., the Subcommittee recessed, to
4 reconvene subject to call of the Chair.)

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